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IN THE

Supreme Court of the United States

October Term, 1969.

No. 1158

L. ARTHUR BURTON, LOUIS A. BENTON, EDMOND H. SHULER, AL L. TOTH, HERMAN TREPTOW, GEORGE SCHIELKE and CITIZENS COMMITTEE FOR FIREARMS LEGISLATION, a corporation of the State of New Jersey,

Appellants,

v.

ARTHUR J. SILLS, Attorney General of the State of New Jersey, and COLONEL DAVID B. KELLY, Superintendent of State Police of New Jersey,

Appellees.

Appeal from the Supreme Court of New Jersey.

STATEMENT AS TO JURISDICTION.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1969.

No.

L. ARTHUR BURTON, LOUIS A. BENTON, EDMOND H. SHULER, AL L. TOTH, HERMAN TREPTOW, GEORGE SCHIELKE and CITIZENS COMMITTEE FOR FIREARMS LEGISLATION, a corporation of the State of New Jersey,

Appellants,

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ARTHUR J. SILLS, Attorney General of the State of New Jersey, and COLONEL DAVID B. KELLY, Superintendent of State Police of New Jersey,

Appellees.

STATEMENT AS TO JURISDICTION.

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The appellants, pursuant to United States Supreme Court Rules 13(2) and 15, file this their statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final judgment of the New Jersey Supreme Court upholding the constitutionality of New Jersey's "Gun Control Law", and should exercise such jurisdiction in this case.

OPINION BELOW.

The opinion of the Supreme Court of New Jersey, affirming the judgment of the Superior Court, Appellate Division, is reported at 53 N. J. 86, 248 A. 2d 521 (1968). The Appellate Division's opinion adopting the opinion of the Superior Court, Law Division, is reported at 99 N. J. Super. 459, 240 A. 2d 432 (App. Div. 1967). The Law Division opinion is reported at 99 N. J. Super. 516, 240 A. 2d 462 (Law Div. 1968). Copies of the opinions below are appended to this statement in Appendices "B", "C", and "D" at pp. 52 to 84.

JURISDICTION.

The appeal herein is from a final judgment of the Supreme Court of New Jersey upholding the constitutionality of New Jersey's "Gun Control Law", L. 1966, c. 60; N. J. S. 2A:151-1 *et seq.* The appellants filed a complaint in lieu of prerogative writ seeking a declaration that Chapter 60

of the Laws of 1966 is unconstitutional and an injunction against its enforcement.

The final judgment appealed from was made and entered on December 16, 1968, and is appended to this statement in Appendix "E" at p. 85. Notice of appeal was filed in the Supreme Court of New Jersey on March 6, 1969.

The Supreme Court of the United States has jurisdiction to review by direct appeal the judgment complained of by the provisions of 28 U. S. C. Sec. 1257(2).

The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case. *American Oil Company v. Neil,* 380 U. S. 451 (1965); *Bantam Books, Inc., et al. v. Sullivan,* 372 U. S. 58 (1962); *Cramp v. Board of Pub. Inst., Orange County, Fla.,* 368 U. S. 278 (1961); *People of State of Illinois v. Board of Education,* 333 U. S. 203 (1947); *Standard Oil Co. of California v. Johnson,* 316 U. S. 48 (1942).

The New Jersey statute that is involved is the "Gun Control Law" L. 1966, c. 60; N. J. S. 2A:151-1 *et seq.* The text of the statute is set out verbatim in Appendix . at pp.

QUESTIONS PRESENTED.

(1) Does Chapter 60 of the Public Laws of 1966 of New Jersey fail in its alleged public purpose and thus fall under the weight of the private rights it infringes upon?

(2) If the Second Amendment of the United States Constitution is made to apply to the States, should Chapter 60 of the Public Law of 1966 of New Jersey be declared to be in violation of said Second Amendment and an unconstitutional act?

(3) Does Chapter 60 of the Public Laws of 1966 of New Jersey violate the rights of citizens of New Jersey contrary to the provisions of Amendments I, IV, V, IX and XIV and Art. I, Sections 8 and 10 of the United States Constitution?

(4) Do the restraints and restrictions of Chapter 60 of the Public Laws of 1966 of New Jersey exceed any claimed regulatory powers of the State and constitute a partial abolition of a basic right?

STATEMENT OF THE CASE.

The appellants filed a complaint in lieu of prerogative writ naming the Attorney General of New Jersey and the Superintendent of State Police of New Jersey as defendants and seeking a declaration that Chapter 60 of the Laws of 1966 is unconstitutional and an injunction against its enforcement.

The appellants are three individuals who are sportsmen, associated with various sportsmen's organizations and clubs in the State of New Jersey, promoting and supporting the sports of hunting, shooting and marksmanship, and two individuals who are dealers in guns, gun smithing, shooting accessories and related supplies, doing business both within and without the State of New Jersey. In addition, there is an appellant non-profit corporation, "Citizens Committee for Firearms Legislation", which promotes the sport of shooting and marksmanship among the people of New Jersey and provides instructions in safety practices with firearms.

The Attorney General of New Jersey and the Superintendent of State Police, the appellees, are the state officials

charged with the interpretation and enforcement of the law under attack.

On July 26, 1966 the appellants herein filed a complaint (P1a)[1] in the Law Division, Superior Court. In paragraphs 9-19 of the complaint, the federal questions the appellants now seek review of were first raised. Paragraph 9 stated that Section 2A:151-19 (App. "A" at pp. 29-30)[2] required the sellers of firearms to register and comply with certain standards. "Such standards are to be prescribed by the Superintendent of State Police . . . and he is given broad powers therein without Legislative direction or specification (P3a)." Paragraph 10 questions the validity of Sections 2A:151-32, 33, 34, 35 (App. "A" at pp. 34-39) which provides that no person, resident or non-resident, may purchase a firearm without first having obtained a firearms purchaser identification card issued by a Chief of Police or . . . "the Superintendent of State Police, according to certain standards set in the Bill but with a general provision allowing wide discretion on the part of such officials and lacking Legislative direction or specification (P4a)."

Paragraphs 11-13 question the validity of section 2A:15-33 (App. "A" at p. 36) which provides for disqualification of applicants on the basis of drunkenness, addiction to narcotics and mental disorders without setting forth any standards to guide the determination of officials charged with the administration of the statute (P4a). Paragraph 14 states that the statute in question section 2A:151-35 (App. "A" at pp. 37-38) . . . "provides for disqualification of an applicant for the holding of political and social beliefs alone without any

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[1] All references to (P a) are to the appellants' Appendix in the Supreme Court of New Jersey, which appendix has been certified and filed with this statement as a part of the record below.

[2] All references to (App. at) are to the Appendix which is appended to this statement.

evidence that a crime or anti-social act had been committed, planned or contemplated (P4a)."

Paragraph 17 questions the validity of the provision, section 2A:151-35 (App. "A" at pp. 37-38) which requires that an applicant for a firearms identification card must be fingerprinted and caused to give detailed intimate information about himself . . . "all to the derogation of the rights and privacy of such applicant (P5a)." Paragraph 18 states that the statute seriously restricts the ability of out-of-state purchasers to purchase firearms in New Jersey and thereby seriously interferes with the free flow of interstate commerce and also intrastate commerce (P5a). Paragraph 19 states that all the provisions mentioned in paragraphs 9 through 18 violate the rights of the appellants under the I, II, V, IX, XIV Amendments and Article I, Section 8 of the United States Constitution (P6a).

Upon filing the complaint, the appellants obtained a temporary restraining order. The order to show cause, which was issued at the same time as the restraining order, called for a hearing on whether or not an interlocutory injunction should issue and such hearing was held shortly thereafter. On August 11, 1966 the Court granted the application of the appellants and enjoined the defendants from enforcing or implementing the law (P40a), which order was stayed by a single judge of the Appellate Division on the same date pending a full hearing before the three-man court. Argument on the appeal from the order was held before the Appellate Division and an order was entered reversing the Law Division's issuance of the interlocutory injunction (P43a-P46a).

On December 15, 1966 the matter came before the Law Division, Superior Court in Somerset County on a motion for summary judgment. At that time the appellants' attorney contended that the matter was not properly a subject for such motion in that factual differences did exist and

argued the cause solely on the basis of whether or not a motion for summary judgment should be entertained (P52a, P62a), reserving the right to argue the case on the law on a further date if the Court should decide to hear such motion.

On February 10, 1967 the Court rendered its decision, upholding the statute under attack and granting the motion for summary judgment. The Law Division opinion is appended to this statement in Appendix "C" at pp. 71-80.

Appellants' attorney challenged the right of the Court to render a decision after having permitted him to proceed in argument on the question of the right to hear the matter on summary judgment and thus having been foreclosed from presenting necessary factual contentions. The Court then granted the appellants the right to prepare and submit supplementary affidavits (P111a) which are now part of the record.

The appellants then filed a Notice of Appeal (P113a) with the Clerk of the Appellate Division of the Superior Court of New Jersey. The Appellate Division affirmed and upheld the constitutionality of the "Gun Control Law". Within proper time the appellants filed a Notice of Appeal (P190a) to the Supreme Court of New Jersey. The appellants, in their brief and oral argument, argued again the constitutional questions first raised in the complaint in the Law Division.

The Supreme Court affirmed the Appellate Division. On the issue of standards, the Court found that the law set guidelines which were clearly sufficient as against the contention that the statute gave the Superintendent of State Police broad powers without legislative direction or specification (App. "B" at p. 53). As for the provisions in the statute for disqualification because of drunkenness, narcotics addiction and mental disorder, the Court found the terms understandable and stated it would not consider the particular terms further since none of the appellants had been

the subject of any of the stated disqualifications (App. "B" at p. 51). Similarly the Court refused to consider the validity of that portion of the statute which requires an applicant for an identification card to state whether he presently or ever has been a member of any organization which advocates the violent overthrow of the government (App. "B" at pp. 51-52).

On the question of the Second Amendment, the Court held that the amendment was adopted not with individual rights in mind but as a protection for the States in the maintenance of their militia organizations (App. "B" at pp. 51-65). As for the Fifth Amendment, the Court found that none of the appellants asserted his own privilege against self-incrimination which is personal in nature, and that the disclosure requirements of the statute were not invalid on their face (App. "B" at p. 68).

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

The right to keep and bear arms is a great fundamental right, long antedating its proclamation in the United States Constitution. *U. S. Constitution, Amendment II.* However, this right was not absolute at the early common law; for the act of going armed to the terror of the populace was an indictable offense. During and after the time of Edward III, no one was allowed before the justices or other ministers while armed, nor was a person permitted to go armed in public places at any time of the day or night. *Statute of Northhampton,* 1328, 2 Edw. III, c. 3. See *Knights Case,* 87 Eng. Rept. 75 (1686). Upon the accession of William and Mary to the throne of England, the people were openly discontented with the actions and policies of James II, an ardent Catholic who attempted to regain for the church its previous position of ascendency in the realm. The grievances of the people were summarized in the Declaration of

Right, subsequently converted into the Bill of Rights. This important statute declared, on behalf of the Lords and Commons, "for the vindicating and asserting their ancient rights and liberties," and that, among other things, "the subjects which are Protestants may have arms for their defense suitable to their conditions, and as allowed by law." *"Bill of Rights,"* Encyclopedia Britannica, Volume III. Thus the act not only recognized a right of some citizens to bear arms for their protection but also affirmed a right for all citizens to retain arms for their security within the framework of the law. Section 7 of the English Bill of Rights is the forebear of the Second Amendment to our National Constitution. See R. A. Rutland, *The Birth of the Bill of Rights, 1776-1791* (Chapel Hill: University of North Carolina Press, 1955), p. 9; note, *So. Calif. L. Rev. XIII* (1939), p. 129.

In the American colonies self and family protection, community defense, the hunting of game for daily sustenance, demanded that every man own and know how to use a firearm as an essential to existence. Such possession and use were hardly questioned. Too, cognizant of the potential evils of standing armies and the necessity for collective and individual defense, Massachusetts and other colonies adopted Bills of Rights forbidding the colonial governments to infringe the right to keep and bear arms. L. A. Emery, *"The Constitutional Right to Keep and Bear Arms,"* Harv. L. Rev., XXVIII (1915), p. 475. The provisions involved were similar: The right of the people to keep and bear arms shall not be violated, or its sense, with mention made of standing armies, or the militia, or the protection of the person or the defense of the State. *Mass. Dec. of Rights,* 1780, Art. XVII; *Va. Bill of Rights,* 1776, Sec. 13; *Pa. Dec. of Rights,* 1776, Art. XIII; *N. C. Const.,* 1776, Art. XVII. These specific constitutional guarantees remained either unchanged or substantially the same when the colonies formed the federal union.

The purpose of the Second Amendment, when it was later adopted as part of our constitution, was the protection of the States and the individual against encroachment of their prerogatives and fundamental entitlements. The new states had only recently won a hard fought war against a tyrannical monarch, and they naturally insisted on setting up reasonable safeguards against the overextension of authority by a perhaps well-intentioned but politically ambitious national government. Thus, the right to keep and bear arms was to serve as a bulwark against any attempt to disarm the populace by a powerful central government and, thus, to effect the people's eventual submission to arbitrary political control. *Commentaries on the Constitution* (Second Ed., 1851), II, 1896.

The importance as well as the extent of the meaning of the right to bear arms was well set forth in an early Tennessee case testing a statute prohibiting the carrying of pistols. In *Andrews v. State,* 3 Heisk (Tenn.), 165, 177-79 (1871), the Supreme Court said:

> "What was the object held to be so desirable as to require its attainment should be guaranteed by being inserted in the fundamental law of the land? It was the efficiency of the people as soldiers, when called into actual service for the security of the State.
>
> What, then, is involved in this right of keeping arms? It necessarily involves the right to purchase and use them in such a way as is usual, or to keep them for the ordinary purposes to which they are adopted; evidently with a view that the citizens shall become familiar with their use in times of peace, that they may be more efficiently used in times of war; this purpose involves the right to practice their use in order to obtain to this efficiency. The right and use are guaranteed to the citizen, to be exercised and enjoyed in time of peace, in sub-

ordination to the general ends of civil society; but, as a right, to be maintained in all its fullness.

The right to keep arms necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair. And clearly for this purpose a man would have the right to carry them to and from his home.

But farther than this, it must be held that the right to keep arms involves, necessarily, the right to use such arms for all the ordinary modes usual in the country, and to which arms are adapted, limited by the duties of a good citizen in times of peace; that in such use, he shall not use them for violation of the rights of others, or the paramount rights of the community of which he takes a part."

The appellants note the major federal cases that have dealt with the question of the right to keep and bear arms and admit to their importance in any discussion concerning this constitutional right. Briefly and in substance they declare that the Second Amendment operates as a restriction upon the Federal Government, spelling out that the stated right shall not be infringed by Congress, but further holding that the Amendment does not apply to state governments. *Tot v. United States,* 131 F. 2d 261 (2d Cir. 1942); *Cases v. United States,* 131 F. 2d 916 (1st Cir. 1942); *United States v. Miller,* 307 U. S. 174 (1939); *Miller v. Texas,* 153 U. S. 535 (1894); *Presser v. Illinois,* 116 U. S. 252 (1886); *United States v. Cruikshank,* 92 U. S. 542 (1876). However, it is contended that advances in constitutional interpretations made by the United States Supreme Court since the last of these decisions was rendered materially affect, if not change, the judicial interpretation early placed upon the Second Amendment.

To properly pursue the argument of the full application of the Second Amendment to both the Federal Government and the State Governments, it appears necessary to meet the arguments which have been made in recent hearings before the Commerce Committee of the United States Senate that, (1) the right to bear arms is not a basic right, and (2) the right to bear arms is not a personal right accorded to the individual, but is only a collective right reserved to the Militia as an organization, both of which arguments the appellants herein dispute with vigor.

First, as to whether the right to bear arms is a basic right. The common law of England is the source of legal precedent in all states and the District of Columbia, with the exception of Louisiana, where the law has depended upon the authority of the civil law of the continent. 11 *Am. Jur.* p. 157. The "bible" of the law of England was Blackstone's Commentaries. In *Jones Blackstone, Book The First,* entitled, "Of The Rights of Persons," and Chapter First, entitled "Of the Absolute Rights of Individuals" we find the caption "Right to Bear Arms" and at the end of a lengthy paragraph the wording "and lastly, to the right of having and using arms for self-preservation and defense." As stated earlier in this argument the basic right was carried forward into our colonial charters, constitutions, and later the Federal Constitution, and all quite apparently on a personal basis.

Passing now to the other contention as to whether the right to bear arms is a right accorded to the individual or only to the Militia. Those that would argue that it is accorded only to the Militia do so on an erroneous interpretation of the wording of the Second Amendment because of its use of the word therein.

In the case of *United States v. Miller,* 307 U. S. 174 (1939), the Court in speaking of the Second Amendment said:

> "The signification attributed to the term Militia appears from the debates in the Convention, the history and legislation of Colonies and States, and the writings of approved commentators. These show plainly enough that the Militia comprised all males physically capable of acting in concert for the common defense. 'A body of citizens enrolled for military discipline.' And further, that ordinarily when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time."

The Supreme Court went on to state that in all the colonies, as in England, the Militia system was based on the principle of the assize of arms. This implied the general obligation of all adult male inhabitants to possess arms, and, with certain exceptions, to co-operate in the work of defense. The Court cited provisions of the laws from not only Massachusetts, but from New York and Virginia, all dated in colonial times. These reveal that not only must the individual have had a musket or a rifle and the necessary ammunition and other equipment in his possession, but he must have purchased them at his own expense. He had to be ready at all times to produce these arms, and could be punished for his failure to do so. The case demonstrates that the right to bear arms was a right accorded to the individual person. See also *Presser v. Illinois*, 116 U. S. 252 (1886).

It might be argued that the right to keep and bear arms is not a right which was granted to the people of the United States by the Federal Constitution or by the Constitutions of the various states. Rather, the right to keep and bear arms existed long before the founding of the republic. Constitutional provisions with respect to the right to keep and bear arms specify that the right, which already exists, shall not be infringed.

The Ninth Amendment to the Constitution of the United States reads:

> "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

Prior to 1965, the Supreme Court had never stated what any of the "unenumerated" rights were, only what they were not. But in ruling on *Griswold v. Connecticut*, 381 U. S. 479 (1965), in that year, the Court held that the right to use or disseminate birth control devices was a right retained by the people, as individuals, under the Ninth Amendment. If a right not specifically referred to in the Constitution can be protected under the Ninth Amendment, there would appear to be a powerful argument for the case that a right which is specifically mentioned in the Constitution, and in fact is duly protected against infringement, can surely receive protection from the same amendment. Then too, the right of an American citizen to protect life, limb, family, and property through the lawful use of firearms can hardly be considered anything less than a basic right.

It is hereby suggested than any discussion of the Second Amendment, to be complete, should involve consideration of the Ninth Amendment, and also the Fourteenth.

Appellants are aware that the Supreme Court of the United States has recognized that even the most fundamental rights of the Bill of Rights are not absolute. But it has also indicated, though less clearly, that the Court will apply a balancing test when a general regulatory statute abridges a recognized fundamental right or freedom. *Konigsberg v. United States*, 366 U. S. 36 (1961); *Bates v. Little Rock*, 361 U. S. 516 (1960); *Communications Association v. Douds*, 339 U. S. 382 (1915).

Appellants contend that Chapter 60 of the Public Laws of 1966 does not serve the public purpose for which it was adopted and that its infringement upon the private rights

of thousands of individuals within the State of New Jersey far outweighs any portion of the public purpose that it may uphold and effect.

In 1966, there were 3,243,370 serious crimes committed in the United States. Firearms of all types, including zip guns, gangster weapons, and alleged guns, were involved in 109,-734, 3.4% of these serious crimes. Rifles and shotguns were involved in less than one-half of one per cent (0.005). The grand total of all crime, excluding traffic offenses, in the United States in 1966 was apparently in excess of 31 million. Serious crimes involving firearms constituted about 35/100 of one per cent (0.0035) of this total. Such crimes involving rifles and shotguns accounted for approximately 5/100 of one per cent (0.0005). What this means in practical terms is that if firearms were to be completely eliminated from society (granted, an impossibility), and no criminal substituted any other type weapon for a firearm, the United States would still have 96.6% of its serious crime, and 99.6% of its total crime. (Also see copy of Congressional Record, Tuesday, July 25, 1967, "The Relationship Between Firearms Licensing Laws and Crime Rates" (P195a); and copy of Congressional Record, Tuesday, January 30, 1968, "Study Proves Gun Ownership a Major Deterrent to Crime" (P201a).)

Applying Amendment II of the United States Constitution to the States, as all modern concepts and interpretations of constitutional law dictate, the statute herein being attacked must be held to be unconstitutional. It is an obvious infringement upon the right to keep and bear arms.

Sections 2A:151-32, 33, 34 and 35 of the statute in question treat with and provide for the application and obtaining of permits and identification cards for the purchase and use of firearms. The most glaring defect in the sections referred to is found in 2A:151-35 wherein it is required that the person filling out an application for an

identification card answer the question, "are you presently or have you ever been a member of any organization which advocates or approves the commission of acts of force or violence, either to overthrow the government of the United States or of this state, or which seeks to deny others of their rights under the constitution of either the United States or the State of New Jersey?" Since the application form further provides that any person who gives or causes to be given any false information in the answering of any of the questions set forth therein shall be guilty of a high misdemeanor, it is readily argued that the answering of the aforesaid question is tantamount to taking an oath. Regardless of how commendable the purpose of asking such question may be, it is a violation of the First Amendment of the United States Constitution and as such must be stricken from the law.

The case of *Keyishian v. Board of Regents of University of State of New York*, 87 S. Ct. 675 (1967), had before it a provision strikingly similar in wording and content. Several of the plaintiffs were required to sign a certificate containing a statement that they were not communists and that they had made certain communications of that fact to the proper officials. Plaintiff Starbuck, however, was a non-faculty employee and in such classification was not required to sign a certificate but rather to answer in writing under oath a question similar to that contained in the application in New Jersey to purchase firearms and obtain an identification card. Starbuck refused to answer the question and as a result was dismissed. The United States Supreme Court therein held that the requirement was unconstitutional and could not be made to apply to the persons involved.

Appellants contend that the *Keyishian* case, *supra*, is particularly applicable to the case at bar and the section immediately under attack and do further contend that such

section in the New Jersey Law must be found to be unconstitutional.

The practical effect of the provisions of Section 2A:151-35, and the law in general, as to the purchase of firearms, has caused large numbers of respectable citizens to legally and legitimately avoid the law by going out of the state to make their purchases (P147a). This is done to permit them to continue to engage in one of the major sports activities of the nation without having to submit to an invasion of their privacy or to the indignities of standing in line between prostitutes and robbery suspects waiting to be fingerprinted.

The end result of this has been a major loss of business to the many legitimate firearms and sporting goods dealers throughout the state of New Jersey giving substance to the arguments of the appellants that the law under attack is a major and unlawful interference with the legitimate business activities of citizens of the State of New Jersey (P144a, P145a). It is also an infringement and interference with the interstate commerce activities of many New Jersey businesses. "To expect people from other states to submit to investigation by New Jersey police and to be fingerprinted in order to make a mail order purchase in New Jersey is well beyond the realm of reasonable expectation" (P126a, P127a).

The dealers in the State of New Jersey are further burdened by the provisions of R. S. 2A:151-3. This prohibits the loaning of money on pistols and revolvers, and gives no consideration to the normal trade activity of borrowing on stock in order to purchase further merchandise for the heavier selling periods such as the hunting season. As such the section violates the right of parties in commerce to engage in normal and legitimate contract activities.

The disclosure requirements of Chapter 60 of the Public Laws of 1966 of New Jersey, Sections 2A:151-8, 9, 32, 33 and 35, are a violation of the Fifth Amendment of the Consti-

tution of the United States. The Supreme Court of the United States, on January 29, 1968, decided the case of *Miles Edward Haynes v. United States,* 88 S. Ct. 722 (1968). This dealt with two sections of the National Firearms Act. 26 U. S. C. Sec. 5841 and 26 U. S. C. Sec. 5851. The appellants hold that it is particularly pertinent and applicable to the case at hand.

Defendant Haynes was in possession of a firearm within the classification of the Act, but the same had not been registered and he had failed or refused to apply for the necessary certificate. He was charged and indicted and a conviction obtained in the United States District Court. The matter came before the Supreme Court of the United States on a writ of Certiorari and the question before that Court was whether enforcement of the section above referred to against the petitioner, despite his assertion of the privilege against self-incrimination, was constitutionally permissible. The United States Supreme Court stated that it had to consider whether, as the petitioner contended, that satisfaction of his obligation to register would have compelled him to provide information incriminating to himself. The Court in its decision said:

> "He must furnish the Secretary of the Treasury with his name, address, the place where the firearm is usually kept, and the place of his business or employment. Further he must indicate his date of birth, social security number and whether he has ever been convicted of a felony. Finally, he must provide a full description of the firearm. . . . The registration requirement is thus directed principally at those persons who have obtained possession of a firearm without complying with the Act's other requirements, and who therefore are immediately threatened by criminal prosecutions under Sections 5851 and 5861. They are unmistakably persons 'inherently suspect of criminal activities.' "

The Court went on to say that such persons are compelled, on pain of criminal prosecution, to provide to the Secretary both a formal acknowledgment of their possession of firearms, and supplementary information likely to facilitate their arrest and eventual conviction. The Court said that the Congress, under the guise of its taxing powers could not bring about a violation of the Fifth Amendment of the United States Constitution by requiring persons to disclose illegal activities. The appellants in this case contend that the Legislature of the State of New Jersey is equally restricted from attempting to bring about an act of self-incrimination on the part of a person who wishes to exercise a personal right, that of the purchase of a rifle or shotgun for legitimate purposes and reasons.

It is clear that the federal questions involved in this case are substantial.

CONCLUSION.

For the foregoing reasons the appellants respectfully submit that this Court has jurisdiction of this appeal under the provisions of 28 U. S. C. Sec. 1257 (2).

Respectfully submitted,

WILLIAM E. OZZARD,
Attorney for Appellants.

APPENDIX A.

CHAPTER 60, LAWS OF 1966

AN ACT concerning firearms and other dangerous weapons and revising, repealing and supplementing parts of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 2A:151-1 of the New Jersey Statutes is amended to read as follows:

2A:151-1. The following definitions apply to this chapter:

a. Firearm or firearms includes any pistol, revolver, rifle, shotgun, machine gun, automatic and semiautomatic rifle, or other firearm as the term is commonly used, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectile, ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances.

It shall also include, without limitation, any firearm which is in the nature of any air gun, spring gun or pistol, carbon dioxide or compressed air gun or pistol, or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas, or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than ⅜ of an inch in diameter, with sufficient force to injure the person.

b. Pistol or revolver includes any firearm with an over-all length less than 26 inches, or a shotgun having a barrel or barrels of a length less than 18 inches, or a rifle having a barrel length less than 16 inches.

c. Rifle and shotgun includes all other firearms with over-all length of 26 inches or greater, provided the length of the barrel or barrels, if a shotgun, is 18 or more inches, and if a rifle is 16 or more inches but does not include machine guns or automatic rifles as defined in section 2A:151-49.

d. Person includes any individual, corporation, partnership, firm or association of any kind or nature whatsoever; any public entity of any kind or nature; the plural as well as the singular and any gender.

e. Superintendent means the Superintendent of State Police.

f. Manufacturer includes all persons who receive or obtain raw materials or parts and process them into firearms or finished parts of firearms, except those persons who exclusively process grips, stocks and other nonmetal parts of firearms. It shall not include those persons who repair existing firearms or who receive and use raw materials or parts solely for the repair of existing firearms.

g. Wholesale dealer includes all persons except the manufacturer, who sell, transfer or assign firearms; or parts of firearms, to persons who are reasonably understood not to be the ultimate consumer, and shall include persons, except the manufacturer, who receive finished parts of firearms and assemble them into completed or partially completed firearms, in furtherance of such purpose, except that

it shall not include those persons dealing exclusively in grips, stocks and other nonmetal parts of firearms.

h. Retail dealer includes all persons except the manufacturer and wholesale dealer who sell, transfer or assign for a fee or profit any firearm or parts of firearms which they have purchased or obtained with the intention, or for the purpose, of reselling or reassigning to persons who are reasonably understood to be the ultimate consumer. It shall also include any person who sells any firearm to satisfy a debt secured by the pledge of a firearm.

i. Explosive includes any chemical compound or mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible materials or other ingredients, in such proportions, quantities or packing that an ignition by fire, by friction, by concussion or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects. The term shall not include small arms ammunition, or explosives in the form prescribed by the official United States Pharmacopoeia.

2. Section 2A:151-2 of the New Jersey Statutes is amended to read as follows:

2A:151-2. Any pawnbroker who sells or possesses for sale or to lend or give away, any firearm or dangerous instrument of any kind usually known as a blackjack, sling shot, slung shot, billy, sandclub, sandbag, bludgeon, metal knuckles, dagger, dirk, dangerous knife or knife as defined in chapter 5, laws of 1952 (C. 2A:151-62), stiletto, cestus, or similar band studded with metal for fitting on the knuckles, loose wool imbedded with metal filings, razor

blades imbedded in wood slivers, handcuffs, iron claws, grenade, bomb or other explosive is guilty of a high misdemeanor.

3. Section 2A:151-4 of the New Jersey Statutes is amended to read as follows:

2A:151-4. Any person becoming the lawful possessor of any firearm who sells, gives or transfers the same to any other person except in the manner provided by this chapter, is guilty of a misdemeanor.

4. Section 2A:151-5 of the New Jersey Statutes is amended to read as follows:

2A:151-5. Any person who commits or attempts to commit an assault, robbery, larceny, burglary, breaking and entering, rape, murder, mayhem, arson, abduction, extortion, kidnapping, sodomy or treason, or who is a fugitive from justice, when armed with or having in his possession any firearm, whether or not capable of being discharged or dangerous instrument of any kind usually known as a blackjack, sling shot, slung shot, billy, sandclub, sandbag, bludgeon, metal knuckles, dagger, dirk, dangerous knife or knife as defined in chapter 5 of the laws of 1952 (C. 2A:151-62), razor, stiletto, cestus, or similar band studded with metal for fitting on the knuckles, loose wool imbedded with metal filings, razor blades imbedded in wood slivers, handcuffs, iron claws, grenade, bomb or other explosive or any object or device, whether toy or imitation, having an appearance similar to or capable of being mistaken for any of the foregoing, shall, in addition to the punishment provided for the crime, be punished on a first conviction by imprisonment for not less than one nor more than 10 years; upon a second conviction by imprisonment for not less

than 3 nor more than 15 years; upon a third conviction by imprisonment for not less than 5 nor more than 20 years; and upon a fourth or subsequent conviction, by imprisonment for not less than 10 years nor more than for life, in the discretion of the court. No such additional punishment shall be imposed unless the indictment shall have averred that the person was armed with or had in his possession any such instrument and conviction was had thereon.

5. Section 2A:151-6 of the New Jersey Statutes is amended to read as follows:

2A:151-6. In the trial of any person for committing or attempting to commit any crime enumerated in section 2A:151-5, the fact that he was armed with or had in his possession any firearm or any dangerous instrument enumerated in section 2A:151-5 is prima facie evidence of his intention to commit said crime with said firearm or dangerous instrument.

6. Section 2A:151-7 of the New Jersey Statutes is amended to read as follows:

2A:151-7. The presence of a firearm or any grenade, bomb or other explosive in a vehicle is presumptive evidence of possession by all persons occupying the vehicle at the time.

7. Section 2A:151-8 of the New Jersey Statutes is amended to read as follows:

2A:151-8. Any person, having been convicted in this State or elsewhere of any crime enumerated in section 2A:151-5, whether or not armed with or having in his

possession any firearm or dangerous instrument enumerated in section 2A:151-5, or any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium unless he possesses a certificate of a medical doctor or psychiatrist licensed in New Jersey or other satisfactory proof that he is no longer suffering from a mental disorder which interferes with or handicaps him in the handling of a firearm, or any person who has been convicted for the unlawful use, possession or sale of a narcotic or nonnarcotic drug or who is registered as a narcotic drug offender under chapter 230 of the laws of 1952, who purchases, owns, possesses or controls any firearm or any of the said dangerous instruments, is guilty of a misdemeanor.

Whenever any person shall have been convicted in another State, territory, commonwealth or other jurisdiction of the United States, or of any country in the world, in a court of competent jurisdiction, of a crime which in said State, jurisdiction or country shall be equal to or comparable or the same as one of the crimes designated in 2A:151-5, then that person shall be subject to the provisions of this section.

8. Section 2A:151-9 of the New Jersey Statutes is amended to read as follows:

2A:151-9. Any person shall have the right to refuse to sell any firearm or dangerous instrument to any other person, provided however that any person who knowingly sells any firearm to a person who does not possess and exhibit to the seller a permit to purchase in the case of a pistol or revolver or a firearms purchaser identification card in the case of a rifle or shotgun; or where the seller has reason to believe that the person is of unsound mind or suffers from a physical defect or sickness which would make it unsafe for him to handle firearms, is guilty of a

misdemeanor. The presentation of a permit for the purchase of a pistol or revolver, or the signing of a certification and presentation of a firearms purchaser identification card for the purchase of a rifle or shotgun as set forth in section 2A:151-32, shall be prima facie evidence of compliance with the requirements of this chapter.

9. Section 2A.151-10 of the New Jersey Statutes is amended to read as follows:

2A:151-10. Any person who knowingly offers, sells, lends, leases or gives to any person under the age of 18 years, any firearm, grenade, bomb or other explosive instrument, or a toy pistol or other instrument from which a loaded or blank cartridge may be fired, or any loaded or blank cartridge therefor, is guilty of a misdemeanor; provided however that a person may lend a firearm to a minor who may borrow same for the purpose of carrying, firing or using said firearm under section 2A:151-11, and provided further said minor furnishes the owner with written consent to his use thereof by his parent or legal guardian.

10. Section 2A:151-11 of the New Jersey Statutes is amended to read as follows:

2A:151-11. Any person under the age of 18 years who purchases, barters, borrows, acquires or exchanges any firearm, grenade, bomb or other explosive, except a firearm as provided in section 2A:151-33, is guilty of a misdemeanor or an act of juvenile delinquency as may be provided otherwise in the statutes; except that any such person may carry, fire or use any firearm in the actual presence or under the direct supervision of his father, mother, guardian or some other person who is himself a holder of a permit to carry a pistol or revolver or a fire-

arms purchaser identification card, or for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision, or for the purpose of competition or target practice in and upon a firing range approved by the governing body or the chief of police of the municipality in which such range is located or the National Rifle Association and which is under competent supervision at the time of such competition or target practice, and except further that a minor under the age of 18 years who has successfully completed a hunter's safety course taught by a qualified instructor or conservation officer and carries in his possession a certificate indicating the successful completion of such a course and has a valid hunting license in his own name, may carry and use a rifle or shotgun as otherwise provided in this chapter, for the purpose of hunting provided the regularly designated hunting season.

11. Section 2A:151-12 of the New Jersey Statutes is amended to read as follows:

2A:151-12. a. Any person who manufacturers or causes to be manufactured, or sells or keeps for sale or offers, gives or disposes of any dangerous instrument of the kinds usually known as a sling shot, slung shot, sandclub, sandbag, bludgeon, metal knuckles, dagger, dirk, knife as defined in chapter 5 of the laws of 1952 (C. 2A:151-62), stiletto, grenade, bomb, or other explosive, cestus, or similar band studded with metal for fitting on the knuckles, loose wool imbedded with metal filings, razor blades imbedded in wood slivers, to any person, except in accordance with Federal or State law is guilty of a misdemeanor.

b. Any person who manufactures or causes to be manufactured, or sells or keeps for sale, or offers, gives or dis-

poses of any dangerous instrument of the kind usually known as blackjack, billy, handcuffs or iron claws, except to any law enforcement officer as enumerated in section 2A:151-43 and provided they are acting within their official capacity and in the performance of their duty, is guilty of a misdemeanor.

12. Section 2A:151-13 of the New Jersey Statutes is repealed.

13. Section 2A:151-15 of the New Jersey Statutes is amended to read as follows:

2A:151-15. Any person who alters, changes, removes, disfigures, obliterates or defaces the name of the maker, model, manufacturer's or serial number, or other mark of identification of any firearm; and any person who sells, leases or transfers any firearm whose serial number has been altered, changed, disfigured or defaced is guilty of a misdemeanor.

14. Section 2A:151-16 of the New Jersey Statutes is amended to read as follows:

2A:151-16. No property right exists in firearms unlawfully possessed, carried, acquired or used, and all such firearms are declared to be nuisances and forfeited to the State. When such forfeited firearms are taken from any person, they shall be surrendered to the sheriff of the county in which taken, or to the head of the police department in municipalities, or to the office of the county prosecutor and may be disposed of when they are no longer needed for evidential purposes and after they have been inventoried and their disposition witnessed and recorded by the head of the agency having possession or his repre-

sentative designated for this purpose. If any such firearms are found to be the property of an innocent owner prior to their disposition, they shall be returned to him if and when no longer needed for evidential purposes.

15. Section 2A:151-18 of the New Jersey Statutes is amended to read as follows:

2A:151-18. This chapter does not apply to antique firearms which are incapable of being fired or discharged or which do not fire fixed ammunition, or those manufactured before 1898 for which cartridge ammunition is not commercially available, and are possessed as curiosities or ornaments or for their historical significance or value.

16. Section 2A:151-19 of the New Jersey Statutes is amended to read as follows:

2A:151-19. No person shall manufacture or sell at wholesale any firearm until he has registered with the superintendent and has furnished him with such particulars as may be prescribed by law and by rules and regulations promulgated by the superintendent for registration. The application for registration shall be accompanied by a fee of $50.00 and may be renewed annually upon payment of a fee of $25.00.

The superintendent shall prescribe standards and qualifications for registration of manufacturers and wholesalers of firearms, for the protection of the public safety, health and welfare. If the superintendent is satisfied that an applicant for registration cannot be permitted to carry on business as a manufacturer or wholesale dealer in firearms without danger to the public health, safety or welfare, he may refuse to register the applicant.

The superintendent shall furnish a certificate of registration to every person registered under this section.

17. Section 2A:151-22 of the New Jersey Statutes is amended to read as follows:

2A:151-22. Every manufacturer and wholesale dealer shall keep a detailed record of each firearm enumerated in section 2A:151-19 sold by him. The record shall include the date of sale, the name and address of purchaser, description of each firearm and the serial number thereof. The information contained in the record shall be available at all reasonable hours for inspection by any law enforcement officer as enumerated in section 2A:151-24 of this chapter.

18. Section 2A:151-24 of the New Jersey Statutes is amended to read as follows:

2A:151-24. No retail dealer shall sell or expose for sale, or possess with intent to sell, any firearm, except that a retail dealer may be licensed to sell firearms as hereinafter provided.

The superintendent shall prescribe standards and qualifications for retail dealers of firearms for the protection of the public safety, health and welfare.

A judge of the County Court of the county wherein the retail dealer has his place of business shall grant licenses in form prescribed by the superintendent, to applicants who meet such standards and qualifications, effective for not more than 1 year from the date of issue, permitting the licensee to sell firearms at retail within a specified municipality, provided that the application shall be accompanied by a fee of $10.00 payable to the superintendent

and may be renewed annually upon payment of a fee of $5.00.

No license shall be granted to any person under the age of 21 years or to any person who could not qualify to obtain a permit to purchase a pistol or revolver or firearms purchaser identification card under section 2A:151-33 of this chapter, or to any corporation, partnership or other business organization in which a controlling or dominating interest is held or possessed by such a person or persons.

Licenses shall be granted subject to the following conditions, for breach of any of which the license shall be subject to revocation on application of any law enforcement officer and after hearing by the issuing court.

a. The business shall be carried on only in the building or buildings designated in the license, provided that repairs may be made by the dealer or his employees outside of such premises;

b. The license or a copy certified by the issuing authority shall be displayed in a conspicuous place on the premises in which the business is conducted where it can be easily read;

c. No firearm or imitation thereof shall be placed in any window or in any part of the premises where it can readily be seen from the outside;

d. No pistol or revolver shall be delivered to any person:

1. Unless the person has obtained a permit to purchase under the provisions of sections 2A:151-32 through 2A:-151-39;

2. Until 7 days have elapsed after the date of the application for the permit;

3. Unless the person either is personally known to the seller or presents evidence of his identity;

4. Unless the pistol or revolver is unloaded and securely wrapped;

e. A true record of every pistol or revolver sold, given or otherwise delivered or disposed of shall be kept by the retail dealer in accordance with the provisions of section 2A:151-25 to 2A:151-29 of this Title.

f. No rifle or shotgun shall be delivered to any person;

1. Unless the person has obtained a firearms purchaser identification card under the provisions of this chapter;

2. Unless the person has exhibited his firearms purchaser identification card and furnished the seller, on a form prescribed by the superintendent, a certification signed by him which shall contain among other things the name, permanent home address and firearms purchaser identification card number of said person. The certification shall be retained by the dealer and shall for law enforcement purposes be made available for inspection by regular police officers of an organized police department of the county in which the retail business is located, county prosecutors and members of their staffs authorized by them, and members of the State Police.

19. Section 2A:151-25 of the New Jersey Statutes is amended to read as follows:

2A:151-25. Every person engaged in the retail business of selling, leasing or otherwise transferring a pistol, or revolver, whether such seller, lessor or transferor is a

retail dealer or otherwise, shall keep a register in which shall be entered the time of the sale, lease or other transfer, the date thereof, the name, age, date of birth, complexion, occupation, residence and a physical description including distinguishing physical characteristics, if any, of the purchaser, lessee or transferee, the name and permanent home address of the person making the sale, lease or transfer, the place of the transaction, and the make, model, manufacturers' number, caliber or other marks of identification on such pistol or revlover and such other information as the superintendent shall deem necessary for the proper enforcement of this chapter. The register shall be retained by the dealer and shall be made available at all reasonable hours for the inspection of any law enforcement officer as enumerated in section 2A:151-24 of this chapter.

20. Section 2A:151-26 of the New Jersey Statutes is amended to read as follows:

2A:151-26. The superintendent shall prepare the form of the register as described in 2A:151-25 and furnish the same in triplicate to each person licensed to be engaged in the business of selling, leasing or otherwise transferring firearms.

21. Section 2A:151-27 of the New Jersey Statutes is amended to read as follows:

2A:51-27. The purchaser, lessee or transferee of any pistol or revolver shall sign, and the dealer shall require him to sign his name to the register, in triplicate, and the person making the sale, lease or transfer shall affix his name, in triplicate, as a witness to the signature. The signatures shall constitute a representation of the accuracy of the information contained in the register.

22. Section 2A:151-28 of the New Jersey Statutes is amended to read as follows:

2A:151-28. Within 5 days of the date of the sale, assignment or transfer, the dealer shall deliver or mail by certified mail, return receipt requested to the office of the chief of police of the municipality in which the purchaser resides, or to the office of the captain of the precinct of the municipality in which the purchaser resides, and to the superintendent, legible copies of the entries in the register on the duplicate copies of the register forms. If hand delivered a receipt shall be given to the dealer therefor.

Where a sale, assignment or transfer is made to a purchaser who resides in a municipality having no chief of police, the dealer shall, within 5 days of the transaction, mail a duplicate copy of the register sheet to the clerk of the county within which the purchaser resides.

23. Section 2A:151-29 of the New Jersey Statutes is repealed.

24. Section 2A:151-30 of the New Jersey Statutes is repealed.

25. Section 2A:151-32 of the New Jersey Statutes is amended to read as follows:

2A:151-32. A. No person shall sell, give, transfer, assign or otherwise dispose of, nor receive, purchase or otherwise acquire a pistol or revolver unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or has first secured a permit to purchase a pistol or revolver as provided by this article.

B. No person shall sell, give, transfer, assign or otherwise dispose of nor receive, purchase or otherwise acquire a rifle or shotgun unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or possesses a valid firearms purchaser identification card, and first, exhibits said card to the seller, donor, transferor or assignor, and unless the purchaser, assignee, donee, receiver or holder signs a written certification, on a form prescribed by the superintendent, which shall indicate that he presently complies with the requirements of section 2A:151-33, and shall contain his name, address and firearms purchaser identification card number or dealer's registration number, and which shall be retained by the seller as provided in section 2A:151-24, provided that a person who is not a dealer may file the certification with the chief of police of the municipality in which he resides or with the superintendent.

C. Notwithstanding any other provision of this section concerning the transfer, receipt or acquisition of a firearm, a permit to purchase or a firearms purchaser identification card shall not be required for the passing of a firearm upon the death of an owner thereof to his heir or legatee whether the same be by testamentary bequest or by the laws of intestacy except that the person who shall so receive or acquire said firearm shall be subject to all other provisions of this chapter; provided further that if the heir or legatee of such firearm does not qualify to possess or carry same under this act, the firearm may be possessed by him for the purpose of sale for a period not exceeding 180 days, or for such further limited period as may be approved by the chief law enforcement officer of the municipality in which the heir or legatee resides or the superintendent.

26. Section 2A:151-33 of the New Jersey Statutes, is amended to read as follows:

2A:151-33. No person of good character and who is of good repute in the community in which he lives, and who is not subject to any of the disabilities set forth in this section or other sections of this chapter, shall be denied a permit to purchase a pistol or revolver or a firearms purchaser identification card, except as hereinafter set forth:

a. No pistol or revolver purchase permit or firearms purchaser identification card shall be issued to any person who has ever been convicted of any crime, to any person addicted to narcotics, or who is a habitual user of goofballs or pep pills, to any person who is confined for a mental disorder to a hospital, mental institution or sanitarium, or to any person who is presently a habitual drunkard; or

b. To any person who suffers from a physical defect or sickness which would make it unsafe for him to handle firearms, to any person who has ever been confined for a mental disorder, or to any alcoholic, unless any of the foregoing persons produce a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in such a manner that would interfere with or handicap him in handling of firearms; or

c. To any person under the age of 18 years; or

d. To any person where the issuance would not be in the interest of the public health, safety or welfare.

27. Section 2A:151-34 of the New Jersey Statutes is amended to read as follows:

2A:151-34. The chief of police of an organized full-time police department of the municipality where the applicant resides or the superintendent in all other cases shall, upon application, issue to any person qualified under the provisions of section 2A:151-33, a permit to purchase a pistol or revolver or a firearms purchaser identification card.

Any person aggrieved by the denial of a permit or identification card may request a hearing in the County Court of the county in which he resides if he is a resident of New Jersey or in the County Court of the county in which his application was filed if he is a nonresident. The request for a hearing shall be made in writing within 30 days of the denial of the application for a permit or identification card. The applicant shall serve a copy of his request for a hearing upon the chief of police of the municipality in which he resides if he is a resident of New Jersey and upon the superintendent in all cases. The hearing shall be held and a record made thereof within 30 days of the receipt of the application for such hearing by the judge of the County Court. No formal pleading and no filing fee shall be required as a preliminary to such hearing. Appeals from the results of such hearing shall be in accordance with law.

28. Section 2A:151-35 of the New Jersey Statutes is hereby amended to read as follows:

2A:151-35. Applications for permits to purchase a pistol or revolver and for firearms purchaser identification cards shall be in the form prescribed by the superintendent and shall set forth the name, residence, place of business, age, date of birth, occupation, sex and physical description including distinguishing physical characteristics, if any, of the applicant, and shall state whether the applicant is a citizen, whether he is an alcoholic, habitual drunkard, addicted to narcotic drugs or is a habitual user of goofballs or pep pills,

whether he has ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or permanent basis, giving the name and location of the institution or hospital and the dates of such confinement or commitment, whether he has been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric condition giving the name and location of the doctor, psychiatrist, hospital or institution and the dates of such occurrence, whether he presently or ever has been a member of any organization, which advocates or approves the commission of acts of force and violence either to overthrow the Government of the United States or of this State, or which seeks to deny others their rights under the Constitutions of either the United States or the State of New Jersey, whether he has ever been convicted of a crime, or disorderly persons offense, and such other information as the superintendent shall deem necessary for the proper enforcement of this chapter. The application shall be signed by the applicant and shall contain as reference the names and addresses of 2 reputable citizens personally acquainted with him.

Application blanks shall be obtainable from the superintendent and from any other officer authorized to grant such permit or identification card, and may be obtained from licensed retail dealers.

The chief police officer or the superintendent shall obtain the fingerprints of the applicant and shall have them compared with any and all records of fingerprints in the municipality and county in which the applicant resides and also the records of the State Bureau of Identification and the Federal Bureau of Investigation, provided that an applicant for a pistol or revolver purchase permit who possesses a valid firearms purchaser identification card, or who has

previously obtained a pistol or revolver purchase permit from the same licensing authority for which he was previously fingerprinted, and who provides other reasonably satisfactory proof of his identity, need not be fingerprinted again; however, the chief police officer or the superintendent shall proceed to investigate the application to determine whether or not the applicant has become subject to any of the disabilities set forth in this chapter.

29. Section 2A:151-36 of the New Jersey Statutes is amended to read as follows:

2A:151-36. The application for the permit to purchase a pistol or revolver, or for the firearms purchase identification card, together with a fee of $2.00 shall be delivered or forwarded to the licensing authority who shall investigate the same and, unless good cause for the denial thereof appears, shall grant the permit, or the identification card, or both, if application has been made therefor, within 10 days from the date of receipt of the application for residents of this State and within 15 days for nonresident applicants. A permit to purchase a pistol or revolver shall be valid for a period of 90 days from the date of issuance and may be renewed by the issuing authority for good cause for an additional 90 days. A firearms purchaser identification card shall be valid permanently or until such time as the holder becomes subject to any of the disabilities set forth in section 2A:151-33, whereupon the card shall be void and shall be returned within 5 days by the holder to the superintendent, who shall then advise the licensing authority. Failure of the holder to return the firearms purchaser identification card to the superintendent within the said 5 days shall be a misdemeanor. Any firearms purchaser identification card may be revoked by the judge of the County Court of the county wherein the card was issued, after hearing upon

notice, and upon a finding that the holder thereof no longer qualifies for the issuance of such permit. The county prosecutor of any county, the chief police officer of any municipality or any citizen may apply to such judge at any time for the revocation of such card.

There shall be no further conditions or requirements added to the form or content of the application, or required by the licensing authority for the issuance of a permit or identification card, other than those that are specifically set forth in this chapter.

30. Section 2A:151-38 of the New Jersey Statutes is amended to read as follows:

2A:151-38. The permit shall be in the form prescribed by the superintendent and shall be issued to the applicant in quadruplicate. Prior to the time he receives the pistol or revolver from the seller, the applicant shall deliver to the seller the permit in quadruplicate and the seller shall complete all of the information required on the form. Within 5 days of the date of the sale, the seller shall forward the original copy to the superintendent and the second copy to the chief of police of the municipality in which the purchaser resides, except that in a municipality having no chief of police such copy shall be forwarded to the clerk of the county wherein the municipality is located. The third copy shall then be returned to the purchaser with the pistol or revolver and the fourth copy shall be kept by the seller as a permanent record.

31. Section 2A:151-39 of the New Jersey Statutes is amended to read as follows:

2A:151-39. A person shall not be restricted as to the number of pistols or revolvers he may purchase, if he applies for

and obtains permits to purchase the same, but only one pistol or revolver shall be purchased or delivered on each permit, except that a person shall not be restricted as to the number of rifles or shotguns he may purchase provided he possesses a valid firearms purchaser identification card and provided further that he signs the certification required in section 2A:151-32B for each transaction.

32. Section 2A:151-41 of the New Jersey Statutes is amended to read as follows:

2A:151-41. Except as hereinafter provided, any person who carries, holds or possesses in any automobile, carriage, motor cycle or other vehicle, or on or about his clothes or person, or otherwise in his possession, or in his possession or under his control in any public place or public area:

a. A pistol or revolver without first having obtained a permit to carry the same in accordance with the provisions of this chapter; or

b. A rifle or shotgun without first having obtained a firearms purchaser identification card in accordance with the provisions of this chapter; or

c. Any dangerous instrument of the kinds known as a blackjack, slung shot, billy, sandclub, sandbag, bludgeon, metal knuckles, cestus or similar leather band studded with metal for fitting on the knuckles, loose wool impregnated with metal filings, or razor blades imbedded in wood slivers, dagger, dirk, dangerous knife or knife as defined in chapter 5 of the laws of 1952 (C. 2A:151-62), stiletto, grenade, bomb or other explosive, other than fixed ammunition, except as such person may be licensed to carry, hold or possess explosives under the provisions of Title 21 of the Re-

vised Statutes and amendments thereto, is guilty of a misdemeanor.

33. Section 2A:151-42 of the New Jersey Statutes is amended to read as follows:

2A:151-42. Nothing contained in section 2A:151-41 shall be construed:

a. to prevent a person from keeping or carrying about his place of business, dwelling house, premises, or on land possessed by him, any firearm or from carrying the same from any place of purchase to his dwelling house or place of business, or from his dwelling house or place of business to or from any place where repairing is done, to have the same repaired; nor

b. to prevent any person from carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice, or fishing; nor

c. to prevent any person from transporting any firearm while traveling directly to or from any place for the purpose of hunting provided such person has in his possession a valid hunting license or while traveling directly to or from any target range or other authorized place for the purpose of practice, match, target, trap or skeet shooting or shooting exhibitions, provided in all cases that during the course of traveling for the purposes set forth in this section, the firearm is unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which the person is transporting the firearm, and provided further that the course of travel to or from said areas may include such deviations as may be reasonable or necessary under the circumstances;

and provided further that nothing contained in this chapter shall be considered as an exemption or exception from the requirements or provisions of Title 23 of the Revised Statutes and amendments thereto or any rules and regulations promulgated thereunder.

34. Section 2A:151-43 of the New Jersey Statutes is amended to read as follows:

2A:151-43. Section 2A:151-41 of this Title does not apply to:

a. The United States Marshal or his deputies;

b. Members of the Armed Forces of the United States or of the National Guard when on duty;

c. Any sheriff, undersheriff, county prosecutor, assistant prosecutor or prosecutor's detective;

d. The regularly employed members, including detectives, of the police department of any county or municipality or of any State, interstate, municipal or county park police force or of any county boulevard police force at all times, while within the State of New Jersey, or any special policeman appointed by the governing body of any county or municipality or by the commission or other board or body having control of any county park police force or any county boulevard police force while engaged in the actual performance of his official duties and when specifically authorized by the governing body to carry firearms;

e. Any member of the State Police, or any motor vehicle inspector;

f. Any jailer, constable, railway police, or any other peace officer, when in discharge of his duties;

g. The members of the Fish and Game Council, or conservation officers, or full-time employees of the Division of Shell Fisheries having the power of arrest and authorized to carry weapons;

h. Any person or jail wardens or their deputies, or any guard or keeper of any penal institution in this State, while engaged in the actual performance of the duties of their positions and when so required by their superior officers to carry firearms;

i. Any court attendant serving as such under appointment by the sheriff of the county or by the judge of or magistrate of any court of this State while in the performance of his duties;

j. (Deleted by amendment.)

k. Any guard in the employ of any railway express company, banking or building and loan or savings and loan institution of this State while in the performance of his duties;

l. Any officer of the society for the prevention of cruelty to animals;

m. Any legally recognized military organization when under orders, or any member thereof when going to or from the place of meeting of the organization, carrying the weapons prescribed for drill, exercise or parade;

n. Persons having a hunter's license in going to or from places of hunting as set forth in section 2A:151-42;

o. Members of government or civilian rifle or pistol clubs duly organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from their several places of target practice and carrying weapons necessary for such practice; provided further that a copy of the charter is filed with the superintendent and a list of the members of the club is submitted annually to the superintendent;

p. The director, deputy directors, inspectors and investigators of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety;

q. Employees of public utility corporations actually engaged in the transportation of explosives;

r. Any civil employee of the United States Government under the supervision of the commanding officer of any post, camp, station, base or other military or naval installation located within this State who is required, in the performance of his official duties, to carry firearms, and who is authorized to carry such firearms by said commanding officer, while such civil employee is engaged in the actual performance of his official duties; or

s. Law enforcement officers employed by governmental agencies outside of the State of New Jersey who are engaged in their official duties provided that they have first notified the chief law enforcement officer of the municipality or the county prosecutor of the county in which they are engaged or the superintendent.

35. Section 2A:151-44 of the New Jersey Statutes is amended to read as follows:

2A:151-44. Any person desiring to obtain a permit to carry a pistol or revolver shall in the first instance make application therefor either to the chief police officer of the municipality in which the applicant resides or to the superintendent if there is no chief police officer in the municipality where the applicant resides. No permit shall be issued to any person who suffers from any disability which would preclude his obtaining a permit to purchase a pistol or revolver as provided in section 2A:151-33 and provided that he produces proof of his familiarity with the handling and use of firearms and of the need therefor.

On all such applications the chief police officer or the superintendent, as the case may be, shall have the fingerprints of the applicant taken and compared with any and all records of fingerprints in the municipality and county in which the applicant is a resident and also the records of the State Bureau of Identification and the Federal Bureau of Investigation. He may also require reasonable proof that the applicant is of sufficient maturity and possesses sufficient skill and knowledge in the handling of firearms. On applications for a permit to carry a pistol or revolver he shall also inquire into and determine the name and address of the manufacturer of the weapon, any and all manufacturer's identification numbers, letters and marks, and a complete description of the kind and type of revolver or pistol which the applicant intends to carry.

If such application is approved by the chief police officer or by the superintendent, as the case may be, the applicant shall then present the same to a judge of the County Court of the county in which the applicant resides. Upon being satisfied of the sufficiency of the application and that the applicant has never been convicted of a crime, is a person of good character, and is not subject to any of the disabilities set forth in section 2A:151-33, and of the need of the

applicant to carry a pistol or revolver, the judge shall issue a permit therefor.

Each applicant for a permit shall at the time of granting the same pay to the clerk of the county in which he resides and in which the application is made, a license fee of $3.00.

One permit shall be sufficient for such revolvers, pistols or other firearms as the applicant may possess.

Failure of the issuing authority to deny the application or issue a permit within 60 days shall be deemed to be approval thereof, unless the applicant waives the time period herein provided or agrees to an extension thereof in writing.

36. Any person aggrieved by the denial by the chief of police or the superintendent of approval for a permit to carry may request a hearing in the County Court of the county in which he resides if he is a resident of New Jersey or in the County Court of the county in which the application is made if he is a nonresident. The request for a hearing shall be made in writing within 30 days of the denial of the application for a permit. The applicant shall serve a copy of his request for a hearing upon the chief of police of the municipality in which he resides if he is a resident of New Jersey and upon the superintendent in all cases. The hearing shall be held and a record made thereof within 30 days of the recipt of the application for such hearing by the judge of the County Court. No formal pleading and no filing fee shall be required as a preliminary to such hearing. Appeals from the results of such hearing shall be in accordance with law. If the superintendent or police chief approves the application and the County Court denies the application, then the appeal from the denial of such application by the County Court shall be in accordance with law.

37: Applications for permits to carry a pistol or revolver and for any renewals thereof shall be on forms prescribed by the superintendent and shall set forth the name, residence, place of business, age, date of birth, occupation, sex and physical description including distinguishing physical characteristics, if any, of the applicant; and shall state whether the applicant is a citizen; whether he is an alcoholic or addicted to drugs or is an habitual user of goofballs or pep pills; whether he has ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or permanent basis, giving the name and location of the institution or hospital and the dates of such confinement or commitment; whether he has been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric condition giving the name and location of the doctor, psychiatrist, hospital or institution and the dates of such occurrence; whether he presently is or ever has been a member of any organization which advocates or approves the commission of acts of force and violence either to overthrow the Government of the United States or of this State, or which seeks to deny others their rights under the Constitutions of either the United States or the State of New Jersey; and whether he has ever been convicted of a crime or disorderly persons offense and such other information as the superintendent may prescribe for the proper enforcement of this chapter. The application shall be signed by the applicant under oath and shall contain the names, addresses and indorsement of the applicant, as a person of good moral character and behavior, by 3 reputable persons who have been personally acquainted with the applicant for a period of at least 3 years next preceding the date of the application and who shall sign their indorsement on the application. There shall

be no further conditions or requirements added to the form or content of the application, or required by the licensing authority for the issuance of a permit than those set forth by the superintendent and those that are specifically set forth in this chapter.

Application blanks shall be obtainable from the superintendent and from the chief police officer of the municipality in which the applicant resides.

38. Section 2A:151-45 of the New Jersey Statutes is amended to read as follows:

2A:151-45. A permit issued under section 2A:151-44 of this chapter shall be sufficient authority for the holder thereof to carry a revolver or pistol in all parts of the State. Except as herein otherwise provided, all permits to carry a pistol or revolver issued pursuant to this chapter shall expire on December 31 subsequent to the date of issue, and may thereafter be renewed annually in the same manner and subject to the same provisions by which the original permit was obtained, provided that the permit shall be void at such time as the holder thereof becomes subject to any of the disabilities set forth in section 2A:151-44, in which event the holder thereof shall return the permit to the superintendent who shall advise the licensing authority. Failure of the holder to return the permit to the superintendent within the said 5 days shall be a misdemeanor. All permits so issued to an employee of an armored car company rendering armored car service shall continue to be in full force and effect so long as the said employee continues in his employment with the armored car company and renewal of the permit shall not be required, but if the said employee ceases to be in such employment he shall surrender the permit to the authority which issued it.

Any permit may be revoked by a judge of the County Court of the county wherein the permit was issued, after hearing upon notice, and upon a finding that the holder thereof no longer qualifies for the issuance of such permit. The county prosecutor of any county, the chief police officer of any municipality or any citizen may apply to such judge at any time for the revocation of any such permit.

39. Section 2A:151-48 of the New Jersey Statutes is amended to read as follows:

2A:151-48. Any person who gives or causes to be given any false information, or signs a fictitious name or address, in applying for a firearms purchaser identification card or a permit to purchase or a permit to carry a pistol, revolver, or other firearm, or in completing the certificate or any other instrument required by this act in purchasing or otherwise acquiring delivery of any rifle, shotgun, pistol, revolver or other firearm, is guilty of a high misdemeanor.

40. Section 2A:151-49 of the New Jersey Statutes is amended to read as follows:

2A:151-49. The term "machine gun or automatic rifle," as used in this chapter, means any weapon, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir, belt or other means of storing and carrying ammunition, which can be loaded into the weapon, mechanism or instrument and fired therefrom.

41. Section 2A:151-53 of the New Jersey Statutes is amended to read as follows:

2A:151-53. Upon the issuance of the license, the judge shall send or deliver it to the superintendent who shall

enter a record of the license and forward the license to the local police chief of the municipality where the licensee resides. The chief shall, in a book provided for that purpose, enter a record of the license, stating the date of its issuance, and the name and address of the person to whom it was issued. After making such record the chief of police shall deliver the license to such person.

42. No incendiary or tracer type ammunition shall be discharged anywhere in this State except for law enforcement purposes by law enforcement officers in the course of their official duties or by members of legally recognized military organizations during the actual course of their official duties in or upon military establishments or ranges constructed or maintained for such purposes and except that nonincendiary shotgun tracer ammunition may be used on a trap or skeet field for target purposes. Nothing in this chapter shall prohibit the carrying or possession for distress signal purposes of flare type guns aboard boats, or ships in open tidewater or upon aircraft.

43. If any provision of this act, or any application of any provision, is held invalid, the invalidity shall not affect other applications of the provision, or other provisions of the act, which reasonably can be given effect despite the invalidity.

44. All violations of this chapter where no specific penalty is otherwise prescibed shall be considered to be misdemeanors.

45, This act shall take effect 60 days after enactment.
Approved June 6, 1966.

APPENDIX B.

SUPREME COURT OF NEW JERSEY

L. ARTHUR BURTON, LOUIS A. BENTON, EDMOND H. SHULER, AL L. TOTH, HERMAN TREPTOW, GEORGE SCHIELKE AND CITIZENS COMMITTEE FOR FIREARMS LEGISLATION, A CORPORATION OF THE STATE OF NEW JERSEY, PLAINTIFFS-APPELLANTS, v. ARTHUR J. SILLS, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, AND COLONEL DAVID B. KELLY, SUPERINTENDENT OF STATE POLICE OF NEW JERSEY, DEFENDANTS-RESPONDENTS.

Argued October 22, 1968—Decided December 16, 1968.

Mr. William E. Ozzard argued the cause for appellants.

Mr. Arthur J. Sills, Attorney General of New Jersey, argued the cause for respondents (*Mr. John W. Hayden, Jr.,* Assistant Attorney General, of counsel and on the brief; *Mr. Stephen L. Skillman* and *Mr. Samuel D. Bornstein,* Deputy Attorneys General, on the brief).

The opinion of the court was delivered by

JACOBS, J. The Law Division upheld the constitutionality of New Jersey's recently enacted "Gun Control Law" (L. 1966, c. 60; N. J. S. 2A:151-1 *et seq.*) and dismissed the

plaintiffs' complaint attacking it. 99 N. J. Super. 516 (1967). The Appellate Division affirmed (99 N. J. Super. 459 (1968)) and the plaintiffs appealed to this Court as of right. R. R. 1:2-1(a).

[1] The plaintiffs are three individuals associated with sportsmen's clubs in New Jersey, two gun dealers, and a corporation organized to promote the sports of shooting and marksmanship. They filed a complaint in lieu of prerogative writ naming the Attorney General and the Superintendent of State Police as defendants and seeking (1) a declaration that Chapter 60 of the Laws of 1966 is unconstitutional and (2) an injunction against its enforcement. Chapter 60 amended previous regulatory provisions governing firearms and provided, *inter alia*, for the licensing of manufacturers, wholesalers and retail dealers, and for the issuance of permits and identification cards to purchasers. N. J. S. 2A:151-19, 24, 32. The complaint alleged that although the statute requires the sellers of firearms to comply with standards and qualifications prescribed by the Superintendent of State Police, it gives the Superintendent broad powers "without legislative direction or specification." N. J. S. 2A:151-19, 24. But the statute explicitly directs the Superintendent to prescribe standards and qualifications necessary for "the public safety, health and welfare"; this guideline, though general, is comparable to that set forth in many other State enactments and is, in its context, clearly sufficient. See *Ward v. Scott*, 11 N. J. 117, 122-128 (1952); *Elizabeth Federal S. & L. Ass'n v. Howell*, 30 N. J. 190, 194 (1959); *Moyant v. Borough of Paramus*, 30 N. J. 528, 552 (1959).

[2] The complaint alleged that the statute requires a firearms purchaser to have an identification card issued by the local chief of police, or in certain instances by the Superintendent, according to stated standards but with a

"general provision allowing wide discretion on the part of such officials and lacking legislative direction or specification." N. J. S. 2A:151-33. The statute provides that a pistol or revolver permit or a firearms purchaser identification card shall not be denied to any person of good character and good repute but that no such permit or identification card shall be issued to certain groups including minors under eighteen, convicted criminals, mental and physical defectives, narcotics addicts, habitual drunkards, etc. It also provides that no permit or identification card shall be issued "to any person where the issuance would not be in the interest of the public health, safety or welfare." At oral argument the Attorney General took the position, with which we agree, that the quoted language was intended to relate to cases of individual unfitness, where, though not dealt with in the specific statutory enumerations, the issuance of the permit or identification card would nonetheless be contrary to the public interest. *Cf. State v. Neumann*, 103 N. J. Super. 83, 87 (Monmouth County Ct. 1968).

In the light of this narrowed construction, the statutory standard is undoubtedly sufficient to withstand attack. See *Ward v. Scott, supra; Elizabeth Federal S. & L. Ass'n v. Howell, supra; Moyant v. Paramus, supra.* The Legislature's goal was to keep guns out of the hands of unfit persons. To that end it disqualified certain classes which quickly come to mind. To guard against inadvertent omissions, it delegated authority to appropriately designated officials to disqualify any unfit individuals who, though not strictly within the enumerated classes, should not in the public interest be entrusted with firearms. To guard against arbitrary official action the Legislature directed early determination and provided for easy appeal to the county court (N. J. S. 2A:151-34). Review from the county court is readily available in the Appellate Division and, when necessary, in this Court. As has been pointed out else-

where, these safeguards are probably of greater significance than further details in the statutory standard. See 1 *Davis, Administrative Law* §2.15 (1958); *Department of Health, State of New Jersey v. Owens-Corning Fiberglas Corp.*, 100 N. J. Super. 366, 385 (App. Div. 1968); *Esso Standard Oil Co. v. Holderman*, 75 N. J. Super. 455, 474 (App. Div. 1962), *aff'd*, 39 N. J. 355 (1963), *appeal dismissed*, 375 U. S. 43, 84 S. Ct. 148, 11 L. Ed. 2d 107 (1963); *Gilman v. City of Newark*, 73 N. J. Super. 562, 596 (Law Div. 1962); see also *Matthews v. State*, 237 Ind. 677, 148 N. E. 2d 334, 335-37 (1958); Note, "Firearms: Problems of Control," 80 Harv. L. Rev. 1328, 1339 (1967).

[3, 4] The complaint alleged that the statutory provisions for disqualification because of habitual drunkenness, narcotics addiction, habitual use of goofballs or pep pills and mental disorder did not embody "any standards to guide the determination of officials charged with administration thereof." But the statutory terms are readily understandable and are comparable to those used in many other New Jersey enactments. See *Laba v. Newark Board of Education*, 23 N. J. 364, 384 (1954); N. J. S. A. 45:9-16; N. J. S. A. 45:4A-15; N. J. S. A. 33:1-39; N. J. S. 3A:6-42. None of the plaintiffs has been the subject of any of the stated disqualifications and this proceeding is not an appropriate one for further treatment of the particular terms in question. Similarly, it is not one for consideration of the validity of that portion of N. J. S. 2A:151-35 which sets forth that an applicant for a permit or identification card must state whether "he presently or ever has been a member of any organization, which advocates or approves the commission of acts of force and violence either to overthrow the Government of the United States or of this State, or which seeks to deny others their rights under the Constitutions of either the United States or the State of New Jersey." None of the plaintiffs suggests that he has been affected by this provision

which is the subject of pending litigation directly addressed to it. See *Application of Marvin, Jr.*, 97 N. J. Super. 62 (App. Div. 1967). Under the circumstances it need not be dealt with here. In the main, we find present occasion for concerning ourselves with the plaintiffs' arguments addressed to the constitutionality of the statute as a whole rather than with the individual attacks on subordinate provisions. See *Grand Union Co. v. Sills*, 43 N. J. 390, 409-411 (1964). In general, those attacks should be dealt with on the basis of complete records in proceedings ripe for determination as in *Re Marvin, supra;* in all events, the attacks on the subordinate provisions would be subject to the doctrine of severability. N. J. S. 2A:151-57.2; *Angermeier v. Sea Girt*, 27 N. J. 298, 311 (1958).

We come now to the several points advanced in the plaintiffs' brief in support of their ultimate position that the Gun Control Law is basically unconstitutional and should be stricken in toto. In their first point they assert that Chapter 60 "fails in its alleged public purpose and thus must fall under the weight of the private rights it infringes upon." The public purpose of the statute is entirely evident; it is designed to prevent criminals and other unfit elements from acquiring firearms. Towards that end the Legislature has set up permit and identification requirements and has provided for disqualifications along with suitable inquiry into qualifications and fitness. In setting its course, the Legislature was undoubtedly aware of the strongly expressed views of the many enforcement officials who have long favored state and federal regulation of the sale and possession of firearms, and of the many disastrous consequences which have resulted from the widespread absence heretofore of such regulation. Illustratively, the Director of the Federal Bureau of Investigation, in supporting gun control laws, recently pointed out that in virtually every murder of a law enforcement officer, a firearm is the instrument of death;

and while he acknowledged that hardened criminals would frequently obtain guns in disregard of control laws, he noted that their acquisition would be more difficult, and that, in any event, a large percentage of the murders in the United States occur "within the family or among acquaintances" where the free availability of the lethal firearm is undoubtedly "a major factor." Wholly apart from the dangers which arise when firearms are in the hands of criminals, there is the undoubted danger when they are in the hands of the immature or the unfit such as the mentally deranged, the addicted and the alcoholic. Chapter 60 is explicitly designed to keep firearms from all such persons whose possession would pose a threat to the public health, safety or welfare. The homicides which occur within the family or among acquaintances, to which the Director referred, often involve highly emotional altercations which would not result in death if a firearm were not ready at hand; and surely the hurried purchase of a firearm following an altercation would be prevented with the ensuing cooling off period entailed by the processing necessities of the statute. See *Zimring*, "Is Gun Control Likely to Reduce Violent Killings?", 35 U. Chi. L. Rev. 721 (1968).

[5] The plaintiffs do not question the legitimacy of the legislative objective but urge that it will not be attained by the Gun Control Law and that the arguments against the Law outweigh those advanced in its favor. They point out that rifles and shotguns, which represent their main concern, accounted for but a small percentage of past homicides, though these notably included political assassinations, killings of enforcement officers, and snipings during riots. And they urge that, as a practical matter, the Law will not prevent hardened criminals from obtaining firearms while it imposes restrictions on those engaged in lawful and favored pursuits including hunting, target shooting, civilian small

arms marksmanship training under Army programs, etc. The restrictions referred to are not prohibitions but are regulatory requirements entailing minor inconveniences which members of our society must accept and bear in the public interest. See 99 N. J. Super., at 461-462; *Grimm v. City of New York*, 56 Misc. 2d 525, 289 N. Y. S. 2d 358, 362 (Sup. Ct. 1968). The fact that some criminals may, despite the Law, still be able to obtain firearms does not at all negate the validity of the conscientious legislative efforts aimed at keeping firearms out of the hands of all dangerously unfit persons, noncriminal as well as criminal. See *People ex rel. Darling v. Warden of City Prison*, 154 App. Div. 413, 139 N. Y. S. 277, 286 (Sup. Ct. 1913).

[6, 7] The plaintiffs urge that the statute, insofar as it places regulatory restrictions on the ownership of firearms by sportsmen, tends to "depress the economic, sociological, and political forces supporting the conservation and wise use of our national resources"; in particular they assert that a depression in recreational shooting activities will bring about "a decrease in the federal funds available for waterfowl management; a decrease in funds available to State game agencies for wildlife conservation and management; and a decrease in the funds available to privately sponsored wildlife conservation organizations." We find it difficult to envision that any such consequences will result from the law's actual operation but, in any event, are entirely satisfied that this argument of the plaintiffs, along with the others embraced within their first point, are matters of legislative rather than judicial concern. The arguments bear on the wisdom of the legislation rather than on its validity. Presumably they were all weighed by the Legislature when it concluded that the Law would further the public interest and should be adopted. We do not sit here as a superlegislature and we accept the legislative judgment

as to the wisdom of the statute. See *New Jersey Chapter, American Institute of Planners v. New Jersey State Board of Professional Planners*, 48 N. J. 581, 609 (1967), appeal dismissed, 389 U. S. 8, 88 S. Ct. 70, 19 L. Ed. 2d 8 (1967). Similarly we honor the presumption of constitutionality which attends all legislation (see *Hudson County News Co. v. Sills*, 41 N. J. 220, 227 (1963), appeal dismissed, 378 U. S. 583, 84 S. Ct. 1914, 12 L. Ed. 2d 1036 (1964); *Fried v. Kervick*, 34 N. J. 68, 74 (1961)) and the doctrine that factual support for the legislative judgment will be presumed and, absent a sufficient showing to the contrary, it will be assumed that the statute rested "upon some rational basis within the knowledge and experience of the Legislature." *Reingold v. Harper*, 6 N. J. 182, 196 (1951); *United States v. Carolene Products Co.*, 304 U. S. 144, 152, 58 S. Ct. 778, 82 L. Ed. 1234, 1241 (1938).

We find no merit in the plaintiffs' first point and deal now with their next point under which they urge that Chapter 60 is violative of the second amendment of the United States Constitution. That amendment reads as follows: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Its history and purpose have been detailed elsewhere and need only be summarized here. *See* Emery, "The Constitutional Right To Keep And Bear Arms," 28 Harv. L. Rev. 473 (1915); Brabner-Smith, "Firearm Regulation," 1 Law & Contemp. Prob. 400 (1934); Rohner, "The Right to Bear Arms: A Phenomenon of Constitutional History," 16 Catholic Univ. L. Rev. 53 (1966); Feller and Gotting, "The Second Amendment: A Second Look," 61 Nw U. L. Rev. 46 (1966); *see also Bakal, The Right to Bear Arms*, 294 (1966).

The common law did not recognize any absolute right to keep and bear arms; that much is conceded by the plaintiffs who cite the Statute of Northampton, 2 Edw. III, c. 3

(1328), which declared that no man should "go nor ride armed by night or by day in fairs, markets, nor in the presence of the justices or other ministers" etc. *See* Emery, *supra*, 28 Harv. L. Rev., at 473; *see also Knight's Case*, 3 Mod. Rep. 117, 87 Eng. Rep. 75 (K. B. 1686). And though the English Bill of Rights of 1689 was aimed at certain abuses which included the disarming of Protestants while others remained armed, its history and terms make it clear that its reference to the right of Protestants to have arms was "a class right rather than an individual right" and that "individual self defense was not within its protective purpose." Feller and Gotting, *supra*, 61 Nw. U. L. Rev., at 48. Indeed the right of Protestants to have arms was expressed to be "as allowed by law" and current English statutes place very stringent controls on the availability of arms; Feller and Gotting note that "for all practical purposes the average citizen cannot lawfully obtain firearms in Great Britain at the present time." 61 Nw. U. L. Rev., at 49.

During the American colonial days there was great fear of military rule; the colonists believed that standing armies were acceptable only in extraordinary circumstances and under control of civil authorities, and that the Militia was the proper organ for defense of the individual States. When the Constitution was adopted, it expressly granted to Congress the power to provide for calling forth the Militia to execute the laws, suppress insurrections and repel invasions, along with the power to provide for organizing the Militia and for governing such part as may be employed in the service of the United States, "reserving to the States respectively, the appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress." Art 1, §8, clauses 15 and 16. With their historic distrust of standing armies and the desire that the Militia be protected from federal encroachment, the States quickly obtained the adoption of the second amendment.

As the language of the amendment itself indicates it was not framed with individual rights in mind. Thus it refers to the collective right "of the people" to keep and bear arms in connection with "a well-regulated militia." Most students of the subject would undoubtedly express agreement with the substance of the currently expressed view that "the term 'well-regulated militia' must be taken to mean the active organized militia of each state, which today is characterized as the state National Guard." Feller and Gotting, *supra,* 61 Nw. U. L. Rev., at 64; *see* N. J. S. 38A:1-2, 3.

The plaintiffs acknowledge that the following federal cases which they cite are generally opposed to their contention that Chapter 60 is invalid under the second amendment, but they urge that "a reinterpretation of the effect of the Second Amendment upon the States is due to be made and the time is now with the New Jersey Statute to be the basis for reinterpretation." *United States v. Cruikshank,* 92 U. S. 542, 23 L. Ed. 588 (1876); *Presser v. Illinois,* 116 U. S. 252, 68 S. Ct. 580, 29 L. Ed. 615 (1886); *Miller v. Texas,* 153 U. S. 535, 14 S. Ct. 874, 38 L. Ed. 812 (1894); *United States v. Miller,* 307 U. S. 174, 59 S. Ct. 816, 83 L. Ed. 1206 (1939); *Cases v. United States,* 131 F. 2d 916 (1st Cir. 1942), *cert. denied,* 319 U. S. 770, 63 S. Ct. 1431, 87 L. Ed. 1718 (1943); *United States v. Tot,* 131 F. 2d 261 (3rd Cir. 1942), *rev'd on other grounds,* 319 U. S. 463, 63 S. Ct. 1241, 87 L. Ed. 1519 (1943).

In *Cruikshank* the defendants were convicted in a lower federal court of conspiring to deprive certain freedom of their right to bear arms allegedly guaranteed them under the second amendment. In reversing, the Supreme Court noted that the right to bear arms was not one created by or dependent upon the federal constitution and that the second amendment meant "no more than it shall not be infringed by Congress." 92 U. S., at 553, 23 L. Ed., at 591-592. In *Presser* the defendant was convicted under a state statute

which provided that it shall be unlawful for any body of men, other than the state's "regular organized volunteer militia" and the troops of the United States, to associate themselves as a military organization or drill with arms, without the license of the Governor. The conviction was sustained in an opinion which expressed the view that the statute did not "infringe the right of the people to keep and bear arms" and which reaffirmed the holding of *Cruikshank* to the effect that the second amendment was inapplicable because it related only to congressional action. 116 U. S., at 264-265, 68 S. Ct., at 584, 29 L. Ed., at 618-619. In *Miller v. Texas* the defendant contended that a state statute which prohibited the carrying of a dangerous weapon on the person, infringed his rights as a citizen and was violative of the second amendment. The Supreme Court found no infringement of his rights and cited *Cruikshank* with full approval. 153 U. S., at 538, 14 S. Ct. 874, 38 L. Ed., at 813.

[8] In *United States v. Miller, supra,* the defendant was convicted of the interstate transporation of a shotgun having a barrel of less than eighteen inches, in violation of the National Firearms Act of 1934. In upholding the conviction, the Supreme Court rejected a defense under the second amendment, noting that there was no evidence indicating that possession of such a shotgun had "reasonable relationship to the preservation or efficiency of a well regulated militia." 307 U. S., at 178, 59 S. Ct., at 818, 83 L. Ed., at 1209. The implication that such evidence might have led to a different result has been criticized elsewhere but need not detain us. *See Cases v. United States, supra,* 131 F. 2d, at 992; Feller & Gotting, *supra,* at 61 Nw. U. L. Rev., at 65-66. It is sufficient here to suggest that under *Miller,* Congress, though admittedly governed by the second amendment, may regulate interstate firearms so long as the regulation does

not impair the maintenance of the active, organized militias of the states.

In *United States v. Tot, supra,* Judge Goodrich pointed out that, unlike the first amendment which provides for protection of free speech and freedom of religion, the second amendment "was not adopted with individual rights in mind, but as a protection for the States in the maintenance of their militia organizations against possible encroachments by the federal power"; in upholding the federal regulation against the interstate shipment of firearms to persons convicted of crimes of violence, he had this to say on behalf of himself and his colleagues:

> Weapon bearing was never treated as anything like an absolute right by the common law. It was regulated by statute as to time and place as far back as the Statute of Northampton in 1328 and on many occasions since. The decisions under the State Constitutions show the upholding of regulations prohibiting the carrying of concealed weapons, prohibiting persons from going armed in certain public places and other restrictions, in the nature of police regulations, but which do not go so far as substantially to interfere with the public interest protected by the constitutional mandates. The Federal statute here involved is one of that general type. One could hardly argue seriously that a limitation upon a privilege of possessing weapons was unconstitutional when applied to a mental patient of the maniac type. The same would be true if the possessor were a child of immature years. In the situation at bar Congress has prohibited the receipt of weapons from interstate transactions by persons who have previously, by due process of law, been shown to be aggressors against society. Such a classification is entirely reasonable and does not infringe upon the preservation of

the well regulated militia protected by the Second Amendment. 131 F. 2d at 266-267.

See also United States v. Adams, 11 F. Supp. 216, 218-219 (S. D. Fla. 1935).

[9] The plaintiffs venture the prediction that, nothwithstanding all of the foregoing, the Supreme Court will hereafter "extend the restrictions of the Second Amendment to all of the States" as it has done with some other amendments in the Bill of Rights. Enough has been said to differentiate the second amendment from those which protect individual rights and, as such, have been carried over into the fourteenth amendment. *See* Cushman, "Incorporation: Due Process and the Bill of Rights," 51 Cornell L. Q. 467 (1966); Henkin, " 'Selective Incorporation' in the Fourteenth Amendment," 73 Yale L. J. 74 (1963). However, the matter need not be pursued, for as the decisions indicate, regulation (such as New Jersey's Gun Control Law) which does not impair the maintenance of the State's active, organized militia (*see* N. J. S. 2A:151-43) is not at all in violation of either the terms or purposes of the second amendment or Art. 1, §8, clauses 15 and 16. *See United States v. Miller, supra,* 307 U. S. 174, 59 S. Ct. 816, 83 L. Ed. 1206; *Cases v. United States, supra,* 131 F. 2d 916; *United States v. Tot, supra,* 131 F. 2d 261; *cf. Presser v. Illinois, supra,* 116 U. S. 252, 6 S. Ct. 580, 29 L. Ed. 615; *Dunne v. People,* 94 Ill. 120 (1879); *City of Salina v. Blaksley,* 72 Kan. 230, 83 P. 619, 3 L. R. A., N. S. 168 (1905); *Biffer v. City of Chicago,* 278 Ill. 562, 116 N. E. 182 (1917).

Long before the enactment of its recent Law (L. 1966, c. 60), New Jersey had many statutory provisions imposing restrictions not only on the carrying but also on the possession and sale of designated firearms. *See* N. J. S. A. 2:176-1 *et seq.* To the extent they were challenged they were readily sustained. *See, e. g., State v. Angelo,* 3 N. J. Misc.

1014 (Sup. Ct. 1925) where the court, in upholding a concealed weapon conviction, stated that, in the exercise of its police power the State could impose "such conditions precedent to the right to carry concealed weapons as the safety and welfare of the people of the state in its judgment require." 3 N. J. Misc., at 1015. There are comparable decisions in other jurisdictions which, like New Jersey, have no express state constitutional provisions dealing with the right to bear arms. *See Biffer v. City of Chicago, supra,* 278 Ill. 562, 116 N. E. 182; *State v. Rheaume,* 80 N. H. 319, 116 A. 758 (1922); *Ex Parte Rameriz,* 193 Cal. 633, 226 P. 914, 34 A. L. R. 51 (1924); *Hardison v. State, Nev.,* 437 P. 2d 868 (1968); *cf. People ex rel. Darling v. Warden of City Prison, supra,* 154 App. Div. 413, 139 N. Y. S. 277; *Grimm v. City of New York, supra,* 56 Misc. 2d 525, 289 N. Y. S. 2d 358. Even in those jurisdictions which have such express state constitutional provisions, the courts have found little difficulty in upholding varying and extensive statutory firearms regulations. *See State v. Dawson* 272 N. C. 535, 159 S. E. 2d 1 (1968); *State v. Robinson,* 217 Or. 612, 343 P. 2d 886 (1959); *Mason v. State,* 39 Ala. App. 1, 103 So. 2d 337 (Ct. App. 1956), *aff'd,* 267 Ala. 507, 103 So. 2d 341 (1958), *cert. denied,* 358 U. S. 934, 79 S. Ct. 323, 3 L. Ed. 2d 306 (1959); *People v. Brown,* 253 Mich. 537, 235 N. W. 245, 82 A. L. R. 341 (1931); *McIntire v. State,* 170 Ind. 163, 83 N. E. 1005 (1908); *City of Salina v. Blaksley, supra,* 72 Kan. 230, 83 P. 619, 3 L. R. A., N. S., 168; *Dabbs v. State,* 39 Ark. 353, 43 Am. Rep. 275 (1882); *Rohner, supra,* 16 Catholic U. L. Rev., at 70-77; Note *supra,* 114 U. Pa. L. Rev., at 553; *see also Robertson v. Baldwin,* 165 U. S. 275, 281-282, 17 S. Ct. 326, 41 L. Ed. 715, 717 (1897).

[10] We have no hesitancy in rejecting the plaintiffs' point grounded on the second amendment and come now to point three of their brief which urges that Chapter 60 is

violative of "Amendments I, IV, V, IX and XIV and Article 1, Secs. 8 and 10 of the United States Constitution." Under this point the plaintiffs address their main attack to that portion of N. J. S. 2A:151-35 which is dealt with in the pending litigation in *Re Marvin, supra,* 97 N. J. Super. 62 and which, as we have already stated, is not an appropriate subject for treatment here. The plaintiffs also attack other portions of N. J. S. 2A:151-35 which require fingerprinting and call upon the applicant to set forth his physical characteristics, whether he has been treated for mental condition, whether he is an alcoholic, drug addict, etc. Earlier in this opinion we expressed our belief that these provisions ought not be dealt with individually in this proceeding; in general, they appear on their face to be reasonably related to the valid statutory objective and nothing in the record now before us would impair their settled attendant presumption of reasonableness. *See New Jersey Chapter, American Institute of Planners v. New Jersey State Board of Professional Planners, supra,* 48 N. J. 581. The State's police power is admittedly a comprehensive one and may be invoked by the Legislature whenever it deems it necessary for the protection of the public health, safety, morals or general welfare. *Reingold v. Harper, supra,* 6 N. J., at 194; *Fried v. Kervick, supra,* 34 N. J., at 74. In our State, as elsewhere, the general welfare concept has received broad definition. *Pierro v. Baxendale,* 20 N. J. 17, 28 (1955). Even when it deals with ordinary essential commodities, the Legislature has power to adopt appropriate regulatory provisions; surely when it deals with dangerous articles such as firearms, it has comparable power with very broad sweep. *See Grand Union Co. v. Sills, supra,* 43 N. J., at 403-404.

The final statutory reference in point three of the plaintiffs' brief is to N. J. S. 2A:151-3. That section provides that "any person who loans money secured by mortgage, deposit or pledge of a pistol or revolver is guilty of a mis-

demeanor and shall be punished by a fine of not more than $500, or by imprisonment for not more than 1 year, or both." It was contained in Chapter 321 of the Laws of 1927 and was not in anywise altered by Chapter 60 of the Laws of 1966. It may originally have been aimed primarily at pawnbrokers but the plaintiffs suggest that its terms would prohibit a bona fide transaction in which a gun dealer seeks to borrow money from a bank on the security of his entire inventory includinig pistols and revolvers. The plaintiffs' complaint did not address itself to N. J. S. 2A:151-3 and so far as appears none of the plaintiffs contemplates any transaction which might fall within its terms. The lower courts did not deal with the matter and the briefs before us do not discuss the statutory history or purpose; under the circumstances, we shall refrain from further discussion of it here. *See Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings* 894-895 (1927).

In their fourth point the plaintiffs contend that the disclosure requirements which are really at the heart of Chapter 60, violate the fifth amendment's privilege against self-incrimination. They place reliance on *Haynes v. United States*, 390 U. S. 85, 88 S. Ct. 722, 19 L. Ed. 2d 923 (1968) where the defendant, after his claim of privilege was rejected, had pleaded guilty to the knowing possession of a sawed-off shotgun which had not been registered as required by §5841 of the National Firearms Act. In holding that the claim of privilege should have been honored and that the defendant's conviction must be set aside, the Court noted that the questions propounded by §5841 were " 'directed at a highly selected group inherently suspect of criminal activities'; they concern, not 'an essentially noncriminal and regulatory area of inquiry,' but 'an area permeated with criminal statutes.' " 88 S. Ct., at 731, 19 L. Ed. 2d, at 933. In contrast, Chapter 60 is clearly regulatory

and its inquiry is designed to keep firearms out of the hand of the unfit rather than to enmesh them in criminal prosecutions; it does not impose any registration requirements comparable to those in *Haynes*. In *Grimm v. City of New York, supra,* the court, distinguishing *Haynes,* recently noted that New York City's Gun Control Law, which it upheld in full, was "regulatory in nature" and was "not aimed at persons inherently suspect of criminal activities." 289 N. Y. S. 2d, at 364.

[11, 12] In *Haynes* the Court, though sustaining the privilege, did not strike any provision of the Act; clearly the present proceeding is not one in which any striking is called for. None of the plaintiffs has asserted his own privilege against self-incrimination which is, of course, personal in nature. *See State v. Toscano,* 13 N. J. 418, 423 (1953). It may well be that no other individual will hereafter assert the privilege. If perchance one does in the course of the administration of Chapter 60, the issue may readily be dealt with, provided it is raised in an appropriate case on an adequate record rather than in academic fashion. For present purposes we need do nothing more than reject the plaintiffs' fourth point insofar as it seeks a declaration that Chapter 60 and its disclosure requirements are invalid on their face.

[13] In their fifth and final point, the plaintiffs urge that the restraints and restrictions in Chapter 60 "exceed any claimed regulatory powers of the state and constitute a partial abolition of a basic right." We find no substance at all to this contention. The plaintiffs cite cases such as *Grosjean v. American Press Co.,* 297 U. S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936), and *Near v. Minnesota,* 283 U. S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931) which have no bearing here. In *Grosjean* the Court struck down an in-

famous attempt to control Louisiana newspapers by the imposition of a gross receipt license tax on newspapers having a designated circulation (*see City of Absecon v. Vettese*, 13 N. J. 581, 585-586 (1953)); and in *Near* the Court struck down a state statute which authorized the suppression of offending newspapers through injunctive proceedings. The constitution's acknowledged abhorrence of prior restraints on the press surely has no relevance to reasonable restraints on the acquisition of dangerous items such as firearms. Our law contains an abundance of valid licensing provisions which have been enacted in furtherance of the public welfare; these include throughgoing fitness requirements such as those which relate to the learned professions and to various trades, occupations and activities. *See* 99 N. J. Super., at 462; *Grand Union Co. v. Sills, supra*, 43 N. J., at 403-404; *Belleville Chamber of Commerce v. Town of Belleville*, 51 N. J. 153, 158 (1968).

New Jersey's Gun Control Law is highly purposed and conscientiously designed toward preventing criminal and other unfit elements from acquiring firearms while enabling the fit elements of society to obtain them with minimal burdens and inconveniences. The plaintiffs themselves admit the need for some "firearms legislation" and, in the concluding paragraph of their brief, they explicitly acknowledge their recognition of "the problems created by the availability of handguns to juveniles, criminals, and irresponsible persons through mail order purchases." It is indeed difficult to understand why their recognition does not quickly carry over into the equally serious and perhaps greater problems created through the free availability by direct purchase of pistols, rifles and other types of firearms. The plaintiffs predict that New Jersey's Law will not achieve its purpose but are unwilling to await the actual results of its operation over a reasonable period of time. They suggest deficiencies in the Law but instead of gearing their attack towards elim-

ination of the deficiencies and the strengthening of the Law, they apparently would scrap the entire regulatory program. They complain about administrative delays which may already have been eliminated and, in any event, may hereafter readily be dealt with administratively. And they express their resentment against the statutory requirements such as fingerprinting, though fingerprinting is now customary for identification purposes in noncriminal fields and does not carry any "odium of bygone days." 99 N. J. Super., at 461.

All in all, the plaintiffs' presentation, while indicating some inconvenience and intrusion into the total privacy they seek to retain, has not established any constitutional infirmity or the deprivation of any basic right. Reasonable gun control legislation is clearly within the police power of the State and must be accepted by the individual though it may impose a restraint or burden on him. On balance, the interests of the State are manifestly paramount, and while New Jersey's comprehensive efforts may not prove to be wholly successful until suitably joined by other jurisdictions, they will undoubtedly have advanced the public welfare by having led the way. *See* 99 N. J. Super., at 462; *Administrative Code of City of New York* §§436-6.0 to 436-6.16 (*Grimm v. City of New York, supra,* 56 Misc. 2d 525, 289 N. Y. S. 2d 358); *cf.* Gun Control Act of 1968, Public Law 90-618, 90th Cong., H. R. 17735 (October 1968), amending 18 U. S. C. c. 44 and 26 U. S. C. c. 53. We agree with the holding of constitutionality below and, accordingly, the judgment of the Appellate Division is:

Affirmed.

For Affirmance—Chief Justice WEINTRAUB and Justices JACOBS, FRANCIS, PROCTOR, HALL, SCHETTINO and HANEMAN —7.

For reversal—None.

APPENDIX C.

L. ARTHUR BURTON, LOUIS A. BENTON, EDMOND H. SHULER, AL L. TOTH, HERMAN TREPTOW, GEORGE SCHIELKE AND CITIZENS COMMITTEE FOR FIREARMS LEGISLATION, A CORPORATION OF THE STATE OF NEW JERSEY, PLAINTIFFS v. ARTHUR J. SILLS, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, AND COLONEL DAVID B. KELLY, SUPERINTENDENT OF STATE POLICE OF NEW JERSEY, DEFENDANTS.

SUPERIOR COURT OF NEW JERSEY.

LAW DIVISION.

Decided February 10, 1967.

Mr. William E. Ozzard, attorney for plaintiffs (*Messrs. Beekman, Ozzard & Mauro,* attorneys).

Mr. Arthur J. Sills, Attorney General of State of New Jersey, attorney for defendants (*Mr. John W. Hayden, Jr.,* appearing).

LEAHY, J. C. C. (temporarily assigned). This is a motion for summary judgment brought by defendants Arthur J. Sills, Attorney General of New Jersey, and Colonel David B. Kelly, Superintendent of the New Jersey State Police, seeking an order dismissing, with prejudice, the complaint

of plaintiffs L. Arthur Burton, Louis A. Benton, Edmond H. Shuler, Al L. Toth, Herman Treptow, George Schielke and the Citizens Committee for Firearms Legislation, a corporation of the State of New Jersey, or for such other relief as the court may grant.

The complaint demands judgment: (a) temporarily enjoining defendants and each of them, their agents and servants, pending the final determination of this cause, from enforcing or in any manner implementing the enforcement of the provisions of chapter 60 of the Laws of 1966; (b) permanently enjoining such enforcement; (c) declaring chapter 60 unconstitutional and void, and (d) seeking such other relief as to the court may seem just and proper.

Request (a) was disposed of by the Appellate Division when it entered an order reversing the trial court's issuance of an interlocutory injunction.

The main thrust of the complaint concerns that part of the statute bringing rifles and shotguns within its purview. It might be pointed out that these items were subject to certain statutory provisions prior to the enactment of chapter 60. See N. J. S. 2A:151-2, 5 through 9, and 19 through 23. The new law extends the regulation of rifles and shotguns to sales. N. J. S. 2A:151-32 *et seq.*, the carrying on of non-exempted activities, N. J. S. 2A:151-41, and the licensing of retail dealers, N. J. S. 2A:151-24 *et seq.*

Plaintiffs assert in their complaint, among other things, that the Superintendent of State Police's power to prescribe certain standards for manufacturers, wholesalers and retailers of firearms is without limits set by the Legislature; the standards set forth in the statute, which an applicant for a firearms purchaser card must meet, are not established with sufficient clarity, but are left to the discretion of the local chief of police; the provisions for disqualification of an applicant do not set forth adequate standards for police officials to follow; the statute fails to protect the rights of

individuals dealt with; the statute impedes the hunters' safety program in New Jersey; the requirement that an applicant give detailed information to the authorities is an invasion of privacy; the statute interferes with the flow of interstate commerce; it violates plaintiffs' rights under the First, Second, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution; and finally, the statute violates plaintiffs' rights under Article I of the Constitution of the State of New Jersey.

Plaintiffs complain that standards and qualifications are to be prescribed by the Superintendent of State Police for manufacturers, wholesalers, and retail dealers of firearms, and that he is given broad powers without legislative direction or specification. N. J. S. 2A:151-19 provides that as to manufacturers and wholesalers:

> "The superintendent shall prescribe standards and qualifications for registration of manufacturers and wholesalers of firearms, for the protection of the public safety, health and welfare. If the superintendent is satisfied that an applicant for registration cannot be permitted to carry on business as a manufacturer or wholesale dealer in firearms without danger to the publice health, safety or welfare, he may refuse to register the applicant."

N. J. S. 2A:151-24 provides that:

> "The superintendent shall prescribe standards and qualifications for retail dealers of firearms for the protection of the public safety, health and welfare."

The question to be decided is whether these standards are reasonable, constitutional and valid.

Our Supreme Court, in *Elizabeth Federal S. & L. Ass'n v. Howell*, 30 N. J. 190, 194 (1959), determined that the "public interest" was a valid standard. And in *In Re Greenville Bus Company*, 17 N. J. 131 (1954), the court held that the terms "public convenience" and "public interest,"

although general in nature, were sufficient to guide administrative authority and to satisfy constitutional requirements.

In *Moyant v. Borough of Paramus,* 30 N. J. 528 (1959), the court, in speaking of adequate standards, sustained the validity of an ordinance empowering the chief of police to issue peddlers' permits upon a showing that the applicant's business and moral character were satisfactory. The court held that it was not necessary to set forth explicit standards if they could be inferred from the entire ordinance, and that the standard of promotion of health, morals and general welfare set forth in N. J. S. A. 40:48-2 was not so vague a directive to municipal authorities as to be unconstitutional. In *Ward v. Scott,* 11 N. J. 117, 123 (1952), the court stated:

> "The exigencies of modern government have increasingly dictated the use of general rather than minutely detailed standards in regulatory enactments under the police power."

[1, 2] In cases where there has been a question in regard to standards, the courts have weighed the inability of the Legislature to promulgate precise standards against the objectives of the designated acts. Where the legislative objectives are clear, the delegation of authority is valid provided that protection from the arbitrary and unreasonable acts of the administrator is available through judicial review. *Tagg Bros. & Moorhead v. United States,* 280 U. S. 420, 50 S. Ct. 220, 74 L. Ed. 524 (1930); *New York Central Securities Corp. v. United States,* 287 U. S. 12, 53 S. Ct. 45, 77 L. Ed. 138 (1932); *NBC v. United States,* 319 U. S. 190, 63 S. Ct. 997, 87 L. Ed. 1344 (1943); *Jones v. Haridor Realty Corp.,* 37 N. J. 384, 391 (1962). The instant statute, in N. J. S. A. 2A:151-21, 24, 34, and 44.1, provides such a means of appeal.

[3] Plaintiffs claim that the act disqualifies applicants on the basis of drunkenness without setting forth any standards to guide officials in determining drunkenness and the degree thereof. The statute actually provides that no pistol or revolver purchase permit for firearms or purchase identification card shall be issued to any person "who is presently a habitual drunkard." The term "habitual drunkard" was defined in *Northwestern Mutual Life Insurance Co. v. Muskegon National Bank,* 122 U. S. 501, 507, 7 S. Ct. 1221, 1224, 30 L. Ed. 1100 (1887): "if you find that the habit and rule of a man's life is to indulge periodically and with frequency, and with increasing frequency and violence, in excessive fits of intemperance, such a use of liquor may properly cause the finding of habitual drunkenness." This is certainly a sufficient standard to guide administrators.

[4] Plaintiffs also contend that the statute provides for disqualification of applicants on the basis of addiction to narcotics and habitual use of "goof balls" or "pep pills" without setting forth any definitions to guide the determination of officials charged with administration thereof, "Narcotic drugs" are defined in R. S. 24:18-2, and the term "addiction to narcotics" has never presented difficulty to the judiciary. See *Boyd v. United States,* 271 U. S. 104, 46 S. Ct. 442, 70 L. Ed. 857 (1926).

While it is true that the terms "pep pills" and "goof balls" are colloquial, nevertheless they are already the subject of legislation: N. J. S. 2A:170-77.8. These terms have been used by the New Jersey courts. See *State v. Wolak,* 26 N. J. 464 (1958). Any habitual use thereof is readily determined by investigating authorities.

[5] Plaintiffs argue that the disqualification of an applicant on the basis of mental disorder does not establish any standards to guide the determination of officials charged

with administration thereof. N. J. S. 2A:151-33(a) and (b) refers to (a) one confined in a hospital, mental institution or sanitarium, and (b) to one who has ever been confined for a mental disorder, but allows such person to overcome disqualification by producing a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof that he is no longer suffering from that particular disability in a manner that would interfere with or handicap him in the handling of firearms.

[6] As to the plaintiffs' contention that the statute provides for disqualification of an applicant solely for holding political and social beliefs, without any evidence that a crime or anti-social act has been committed, planned or contemplated, the answer is that no such provision exists in the statute. The provision in the application form which requires the applicant to set forth whether or not he presently or ever has been a member of any organization which advocates or approves the commission of acts of force and violence, either to overthrow the government of the United States or of this State, or who seeks to deny others their rights under the Constitution of either the United States or the State of New Jersey, is information that would be needed by the issuing authority to ascertain whether issuance would be in the interest of the public health, safety or welfare.

[7] Plaintiffs maintain that the statute, in providing for the revocation of a permit, and also for the denial of a permit in the future to anyone who has had a permit revoked, fails to give full protection to the rights of the individuals so dealt with. It is true that N. J. S. 2A:151-44 prior, to its present amendment, provided that no person whose permit had been revoked would thereafter be issued any permit under the provisions of the article, N. J. S.

2A:151-1 *et seq.* However, it may be noted that the revised form of N. J. S. 2A:151-45 provides for revocation after hearing upon notice and a finding that the permit holder no longer qualifies for the issuance of a permit, but makes no provision indicating that a future application may not be made and a permit issued, if the applicant is qualified at that time.

[8] Plaintiffs further contend that the statute attempts to set certain conditions for the possession and use of a rifle or shotgun by a minor and interferes with the rights of an individual and hampers the safety program in the State of New Jersey. It is obvious to the court that, if anything, the statute provides for increased safety measures.

[9, 10] Plaintiffs also contend that the statute provides that an applicant for a firearms purchaser identification card must be fingerprinted and investigated, and give detailed intimate information about himself to the chief police official or superintendent as hereinabove recited, all in derogation of his rights and privacy. It is within the police power of the Legislature to authorize the Superintendent of State Police or a local chief of police to inquire into the background of those seeking to carry, transport or traffic in guns. Public health and safety are dependent upon who carries, purchases, and traffics in guns. As to fingerprints, it has been held in this State that the taking of fingerprints is not a violation of the Fifth Amendment. See *State v. King*, 44 N. J. 346 (1965).

There can be no doubt that under certain circumstances the interest of the State in the protection of the public safety, health and welfare outweighs individual rights in connection with divulging associations or associational privacy. See *Griswold v. State of Connecticut*, 381 U. S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965). Membership in

certain organizations is relevant to the question of character and would assist the investigating authority in determining whether issuance would be in the public interest.

Cases cited to the court, interpreting the First Amendment and involving oaths required of employees and school teachers, which oaths result in their being deprived of their livelihood in the event they do not subscribe to them, are inapposite. We are not dealing here with a subject as delicate and fundamental as marital privacy (*Griswold, supra*) or a situation as economically vital to the individual citizen as holding employment. There are no sanctions here against persons who choose not to furnish the required information. Certainly the State should know if an applicant for a permit to purchase or to carry firearms is a member of an association that advocates the forceful overthrow of either the government of the United States or of this State, and while he may have a right to join and participate in activities leading to that end, he certainly does not have the right superior to the power of the State as sovereign, to carry a firearm in the course of engaging in such activity.

[11, 12] Plaintiffs also argue that the new law restricts the ability of nonresidents to purchase rifles and shotguns in New Jersey, and so interferes with the flow of interstate commerce and with the rights of dealers to do business within and without the State. The regulation in question is not primarily aimed at interstate commerce, and the fact that it may, to some extent, affect interstate commerce is of no consequence with respect to the issue of constitutionality. Nonresident purchasers are not discriminated against. If they wish to purchase firearms in New Jersey, they must go through the same procedures as New Jersey residents, outlined in N. J. S. A. 2A:151-34. In the absence of conflicting legislation by Congress there is a residuum of power in the State to make laws governing matters of local concern

which, nevertheless, in some measure affect interstate commerce, or even to some extent regulate it. *Cooley v. Board of Wardens,* 12 How. 299, 30 L. Ed. 996 (1851), and *First National Benevolent Society v. Garrison,* 58 F. Supp. 972 (D. C. 1945), affirmed 155 F. 2d 522 (9 Cir. 1946).

N. J. S. 2A:151-34, even before it was amended, restricted the sales of pistols and revolvers, just as it does today. The only difference in the new law is that the section was supplemented to provide for a firearms purchaser identification card for the purchase of rifles and shot guns. The court fails to see any constitutional distinction between this restriction and the restrictions on the sale of rifles and shotguns. The court can conceive of no matter more concerned with public safety, health and welfare of the State of New Jersey than that the indiscriminate purchase and use of firearms, and the regulation thereof should be subject to the police power of the State.

[13] The essence of the Second Amendment of the United States Constitution is that it recognizes the right of the citizenry to organize militias and thus establish their safety from federal encroachment. The Gun Law in no way trespasses on a citizen's right to bear arms as guaranteed by the Second Amendment. The approach to the Second Amendment expressed here has been adopted by the judiciary in *Cases v. United States,* 131 F. 2d 916 (*Puerto Rico* 1 Cir. 1942), *certiorari denied* 319 U. S. 770, 63 S. Ct. 1431, 87 L. Ed. 1718 (1942), rehearing denied 324 U. S. 889, 65 S. Ct. 1010, 89 L. Ed. 1437 (1942).

Plaintiffs' contention that they possess a personal, individual constitutional "right" to bear arms is without merit. Established judicial precedent and historical interpretation are to the contrary. This also applies to any claim of "infringement" of this "right"; that question was settled in

United States v. Cruikshank, 92 U. S. 542, 23 L. Ed. 588 (1875), where the court said:

> "The Second Amendment declares that it shall not be infringed; but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national government" (at p. 553).

This view was upheld in *Presser v. State of Illinois*, 116 U. S. 252, 6 S. Ct. 580, 29 L. Ed. 615 (1886), and *Miller v. State of Texas*, 153 U. S. 535, 14 S. Ct. 874, 38 L. Ed. 812 (1894).

[14] It is clear from all the foregoing authorities that the Second Amendment merely protects against unwarranted extensions of federal power and does not bar a state government from enacting regulations concerning the use and possession of arms.

[15] It is well established that summary judgment may be granted where there are no palpable issues of fact so that the final determination of the case is a matter of law. See R. R. 4:58-3. The court finds no issue of fact involved. It finds the statute in question to be constitutionally regulatory, with the proper provisions for appeal, and not prohibitory. Defendants' motion for summary judgment is granted.

APPENDIX D.

L. ARTHUR BURTON, LOUIS A. BENTON, EDMOND H. SHULER, AL L. TOTH, HERMAN TREPTOW, GEORGE SCHIELKE AND CITIZENS COMMITTEE FOR FIREARMS LEGISLATION, A CORPORATION OF THE STATE OF NEW JERSEY, PLAINTIFFS-APPELLANTS, v. ARTHUR J. SILLS, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, AND COLONEL DAVID B. KELLY, SUPERINTENDENT OF STATE POLICE OF NEW JERSEY, DEFENDANTS-RESPONDENTS.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Argued November 20, 1967—Decided January 9, 1968.

Before Judges KILKENNY, CARTON and MALECH.

Mr. William E. Ozzard argued the cause for appellants *(Messrs. Beekman, Ozzard & Mauro,* attorneys.)

Mr. Arthur J. Sills, Attorney General of New Jersey, argued the cause for respondents *(Mr. Joseph A. Hoffman,* Assistant Attorney General, of counsel; *Mr. Stephen Skillman,* Deputy Attorney General, on the brief.)

The opinion of the court was delivered by

KILKENNY, J. A. D. Plaintiffs appeal from a summary judgment dismissing their complaint and upholding the constitutionality of the new "Gun Control Law," L. 1966, c. 60.

We affirm the judgment substantially for the reasons expressed by Judge Leahy in his opinion, 99 N. J. Super. 516. We add thereto the following brief supplement.

In Application of Marvin, 97 N. J. Super. 62 (App. Div. 1967), we upheld the validity of that portion of the statute relating to issuance of firearms purchaser identification cards, which required the applicant to state, *inter alia*, whether he had ever been a member of any organization advocating or approving the commission of acts of force and violence either to overthrow the government of the United States or of the State, or which sought to deny others their rights under the Constitutions of either the United States or of the State. That opinion speaks for itself.

The present appeal by sportsmen, gun dealers and a non-profit sportsmen's organization represents a broader attack upon the constitutionality of the law. Plaintiffs contend that the act fails in its alleged public purpose and "thus must fall under the weight of the private rights it infringes upon." They further maintain that it violates the Second Amendment to the United States Constitution and the rights of citizens of New Jersey provided for in Amendments I, IV, V, IX and XIV and Article I, Secs. 8 and 10 of the United States Constitution. They claim that the law's restraints and restrictions exceed the State's regulatory powers and constitute "a partial abolition of a basic right."

We are satisfied that this gun control law is a proper and reasonable exercise of the State's police powers. It was adopted for legitimate ends. Its wisdom and enforcement are matters within the domain of the Legislature and those charged with its administration. It is too early to stamp it

as a failure. Its efficacy must await the test of time. Already more than 50,000 persons have been issued the necessary identification cards permitting them to purchase guns in New Jersey. Approximately 1,000 applications have been rejected. The propriety of these rejections has not been challenged on this appeal. Some 5,000 applications were pending at the time of oral argument. Thus, no law-abiding citizen, free from the statute's disqualifications, has been or will be precluded from purchasing, keeping or bearing arms.

Not even plaintiff gun enthusiasts plead for the unregulated right of habitual drunkards, narcotics addicts, criminals, mental cases, or proponents of force and violence who approve and advocate such means to overthrow the government or deny the enjoyment by others of the constitutional rights, to purchase firearms. Rather, they complain of the inconvenience and delay which some hunters and sportsmen have experienced in obtaining their identification cards. Experience in administering this new law will minimize such inconveniences and delays. Some find the fingerprinting requirement personally objectionable. But fingerprinting no longer bears the odium of bygone days when generally only persons charged with crime were fingerprinted. Nowadays, many people in all walks of life freely submit to this beneficent identification process. Inconvenience, delay and sensitive feelings are not adequate grounds for striking down this legislation and frustrating its good purposes.

We find no substantial merit in the claim that this law wrongfully infringes upon the individual's constitutional rights under any of the provisions specified. Under the State's police powers, the common good takes precedence over private rights. One's home may be destroyed to prevent a conflagration. One's freedom of locomotion may be impeded to prevent the spread of a contagious disease. Our

basic freedoms may be curtailed if sufficient reason exists therefor. Only in a very limited sense is a person free to do as he pleases in our modern American society. Regulation by the government is the price we pay for living in an organized community. From the day we are born, when a birth certificate must be filed, until the day we die, when official certification thereof must be recorded, we spend the intervening years obtaining licenses to marry, to drive a motor vehicle, to sell alcoholic beverages, to operate a barbershop, to practice the learned professions and to do countless other things, including the obtaining of a license to hunt and fish. These burdens we assume for the good that flows therefrom. We find no basic difference in a requirement to obtain a gun purchaser's identification card.

Until other jurisdictions, including the Federal Government, pass similar gun control laws, the full fruition of the statute will probably not be forthcoming. But New Jersey had led the way and it may be reasonably anticipated that others will follow. New York City has already done so. Legislation is pending in Congress. Meanwhile, hunters, sportsmen and other qualified persons may continue to purchase firearms and enjoy their lawful pursuits. The law is obviously not aimed at them, but at others specified in the statute. Not even gun dealers, despite a loss of profit, should want to sell guns to those in whose irresponsible hands such weapons pose a threat to the public safety and the general welfare.

The judgment is affirmed.

APPENDIX E.

JUDGMENT AND MANDATE ON AFFIRMANCE.

(Filed December 16, 1968.)

It is hereupon ordered and adjudged that the judgment of the Superior Court, Appellate Division, is affirmed with costs and it is further ordered that the record be remitted to the Superior Court, Law Division to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

WITNESS the Honorable Joseph Weintraub, Chief Justice.

Judgment Entered December 16, 1968.
Mandate Issued December 26, 1968.

A True Copy.
JOHN H. GILDEA, Clerk,
Clerk of the Supreme Court.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1158

L. ARTHUR BURTON, LOUIS A. BENTON, EDMOND H. SHULER, AL L. TOTH, HERMAN TREPTOW, GEORGE SCHIELKE and CITIZENS COMMITTEE FOR FIREARMS LEGISLATION, a corporation of the State of New Jersey,

Appellants,

v.

ARTHUR J. SILLS, Attorney General of the State of New Jersey, and COLONEL DAVID B. KELLY, Superintendent of State Police of New Jersey,

Appellees.

On Appeal from the New Jersey Supreme Court

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

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On the Brief.

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IN THE

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OCTOBER TERM, 1968

No. 1158

L. ARTHUR BURTON, LOUIS A. BENTON, EDMOND H. SHULER, AL L. TOTH, HERMAN TREPTOW, GEORGE SCHIELKE and CITIZENS COMMITTEE FOR FIREARMS LEGISLATION, a corporation of the State of New Jersey,

Appellants,

v.

ARTHUR J. SILLS, Attorney General of the State of New Jersey, and COLONEL DAVID B. KELLY, Superintendent of State Police of New Jersey,

Appellees.

On Appeal from the New Jersey Supreme Court

Motion to Dismiss

Pursuant to Rule 16(1)(b) of this Court, the Attorney General of the State of New Jersey, on behalf of himself and Colonel David B. Kelly, Superintendent of the State Police of New Jersey, hereby moves to dismiss this appeal on the grounds that it does not present a substantial federal question.

Statement of Questions Presented

1. Does the Second Amendment to the United States Constitution prevent a state from regulating the sale of firearms?

2. Should this Court entertain arguments addressed to the validity under the United States Constitution of individual sections of the New Jersey Firearms Law, when the Supreme Court of New Jersey declined to consider such arguments because the appellants had not been personally affected by the sections which they question?

Statement of the Case

This is an appeal from a judgment of the Supreme Court of New Jersey, upholding the constitutionality of the New Jersey Firearms Law as amended by Chapter 60 of the Public Laws of New Jersey of 1966 (P85).

The litigation was commenced by a complaint in lieu of prerogative writ, seeking a declaration that Chapter 60 is unconstitutional and an injunction against its enforcement. The plaintiffs include three sportsmen, two gun dealers, and a corporation allegedly organized to promote the sport of shooting. The defendants are the public officials responsible for the enforcement of Chapter 60, the Attorney General of the State of New Jersey and the Superintendent of the State Police.

The main thrust of Chapter 60 is to prevent unfit and criminal elements from acquiring firearms. The legislation seeks to accomplish this objective by providing that a person who desires to purchase firearms must first apply for a firearms purchaser identification card or pistol permit, and that certain classes of persons are not to be granted such cards or permits. N.J.S. 2A:151-33. The Act thus provides that an identification card or permit shall not be

issued where the prospective purchaser (1) has been previously convicted of a crime; (2) is addicted to narcotics; (3) is a habitual drunkard; (4) is confined to a hospital for reasons of mental disorder; (5) is a minor under the age of 18 years; or (6) is a person to whom issuance would not be in the interest of the public health, safety, or welfare. N.J.S. 2A:151-33(a), (c) and (d). Persons who have been alcoholics, confined for mental disorders or suffered from physical defects which would make it unsafe for them to handle firearms must produce satisfactory evidence of their present competency to handle firearms. N.J.S. 2A:151-33 (b).

One of the means which the law provides to enable the issuing officers to determine whether an applicant for a firearms identification card or pistol permit falls within one of the disqualified classes is the requirement that an application, containing various pertinent information, be submitted. In the application both for permits and for identification cards, the applicant must set forth his name, address, place of business, sex, occupation, age and distinguishing physical characteristics. He must also state whether he is disqualified from obtaining a permit or identification card by reason of any of the grounds stated in N.J.S. 2A:151-33 and N.J.S. 2A:151-35. The applicant's fingerprints shall be taken if he has not previously provided them in a prior application for a permit or identification card.

The permit or identification card is to be granted within 10 days unless good cause for a denial appears. N.J.S. 2A:151-36. Any applicant aggrieved by a denial may, within 30 days of the denial, request a hearing in the appropriate county court and such hearing shall be held within 30 days. N.J.S. 2A:151-34. No formal pleadings nor filing fees are required.

The complaint alleged that Chapter 60 does not set forth any standards to guide officials in determining whether a particular applicant is disqualified from obtaining a firearms purchaser identification card (P4a-3 to 18); restricts and hampers the hunters safety program of the State of New Jersey (P5a-1 to 5); impinges upon the rights and privacy of applicants for firearms purchaser identification cards (P5a-6 to 11); interferes with the free flow of interstate commerce and the right of gun dealers to do business within and without the State (P5a-12 to 18); is not reasonably related to the public safety, morals, health and welfare of the State (P5a-21 to 24); and also violates Article I, section 8, and the First, Second, Fifth, Ninth and Fourteenth Amendments of the United States Constitution as well as Article 1, sections 1 and 21 of the New Jersey Constitution. Many of these allegations, initially raised in "shotgun" form by the appellants' complaint, were not pursued and thus not expressly considered by the state courts.

On a motion for summary judgment, the Superior Court, Law Division, sustained the constitutionality of Chapter 60 and dismissed the appellants' complaint. 99 N. J. Super. 516, 240 A. 2d 462 (1967) (Reprinted in Appendix "C" to Jurisdictional Statement, at P71 to P80a). On appeal, its judgment was affirmed by the Superior Court, Appellate Division. 99 N. J. Super. 459, 240 A. 2d 432 (1968). (Reprinted in Appendix "D" to Jurisdictional Statement, at P81 to P84).

On December 16, 1968, the Supreme Court affirmed the decisions of the courts below and sustained the constitutionality of Chapter 60. 53 N. J. 86, 248 A. 2d 521 (1968) (Reprinted in Appendix "B" to Jurisdictional Statement, at P52 to P70). In its opinion, the court found sufficient factual support for the legislative judgment that such regulation of the sale and use of firearms was necessary in fur-

therance of the public interest. The court also held that the Second Amendment to the United States Constitution, having been adopted to protect the state militias against possible federal encroachment, does not confer an individual right to bear arms, and that in any event, a regulatory provision such as Chapter 60 would not violate the Amendment.

The New Jersey Supreme Court also referred to several other constitutional points raised by the appellants, including claims that individual sections of the law violated the First and Fifth Amendments (App. "B" at P55 to P56 and P67 to P68). The court refused to rule on these points, however, because none of the appellants could show that he had been personally affected by these sections of Chapter 60.

ARGUMENT

POINT I

The appellants have not presented a substantial constitutional issue entitling them to appeal, because the decisions of this Court clearly establish that laws regulating the sale and use of firearms, such as Chapter 60 of the Public Laws of New Jersey of 1966, do not violate the Second Amendment of the United States Constitution.

The Second Amendment of the United States Constitution provides:

> "A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed."

As the appellants frankly acknowledge, the major decisions of this Court have consistently construed the Second Amendment to limit only the power of the federal government.

In *United States* v. *Cruikshank*, 92 U. S. 542 (1875), the Court pointedly described the limited scope of the Second Amendment:

> '. . . [It] declares that [the right of the people to keep and bear arms] shall not be infringed; but this . . . means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national government, leaving the people to look for their protection against any violation by their fellow-citizens of the rights it recognizes, to . . . internal police . . .'' 92 U. S. at 553.

The Court reaffirmed this interpretation of the Second Amendment in *Presser* v. *Illinois*, 116 U. S. 252 (1886), in holding valid an Illinois statute regulating military parades, and in *Miller* v. *Texas*, 153 U. S. 535, 538 (1894), which sustained a Texas statute prohibiting the carrying of dangerous weapons on the person.

It is also clear that the Second Amendment, in limiting the power of the Federal Government, merely guaranteed the right to keep and bear arms to the various state militias and not to individual citizens. In *United States* v. *Miller*, 307 U. S. 174 (1939), which involved a challenge of the National Firearms Act on Second Amendment grounds, the Court found that the Amendment did not guarantee the right to keep and bear any weapon not having a reasonable relationship to the preservation or efficiency of a well-regulated militia. Further, it said that the obvious purpose of the Amendment was to assure the continuation and ren-

der possible the effectiveness of the militia, subject to call and organization by Congress under Article 1, Section 8, clauses 15 and 16 of the United States Constitution, and that the Amendment must be interpreted and applied with that end in view.

Subsequent discussion of the Second Amendment is contained in two Circuit Court of Appeals decisions which the court declined to disturb. *United States* v. *Tot, reversed on other grounds,* 319 U. S. 463 (1943); *Cases* v. *United States,* 131 F. 2d 916 (1st Cir. 1942), *cert. denied* 319 U. S. 770 (1943). In *Tot* the court found it abundantly clear from a historical review of the conditions under which the Second Amendment was adopted that, unlike the First Amendment, it "was not adopted with individual rights in mind, but as protection for the states in the maintenance of their militia organizations against possible encroachments by the federal power." 131 F. 2d at 266. In the *Cases* opinion, the First Circuit similarly observed that the right to keep and bear arms "is not a right conferred upon the people by the federal constitution" and "whatever rights in this respect the people may have depend upon local legislation." 131 F. 2d at 921.

To avoid the onus of the cases holding that the Second Amendment is effective only against the Federal Government, and that it merely guarantees the right to keep and bear arms to the various state militas and not to individual citizens, the appellants urge that the "right to bear arms" is a "basic right" protected under the Ninth and Fourteenth Amendments (P14). This contention is frivolous. We note, to the extent it may be relevant, that there was no inalienable right to bear arms even at common law. Thus it was clearly provided by the Statute of Northhampton, 2 Edw. III, c. 3 (1328),

that no man should "go nor ride armed by night or by day in fairs, markets, nor in the presence of the justices or ministers . . ." See *Knights' Case,* 3 Mod. Rep. 117, 87 Eng. Repr. 75 (1686). In fact, the irresponsible brandishing of weapons was, even absent statute, a common-law crime. See *R.* v. *Meade,* 19 T. L. R. 540 (1903). Moreover, a careful study of the English Bill of Rights, enacted in 1688, discloses that it did not grant a sweeping personal right to bear arms, but merely re-established a long-accepted bulwark against tyranny by the central government—namely the citizen militia. See Bakal, *The Right to Bear Arms* (1966), pp. 300-301.

The relationship between this limited "right to bear arms" and the Second Amendment must be appraised in light of the circumstances surrounding enactment of the Amendment. The Articles of Confederation, by which the states first bound themselves together after the Revolutionary War, proved unsuccessful because the problems facing the new states could not be solved by the efforts of individual sovereignties, but rather necessitated the intervention of a stronger central authority. This led to the convening of the Constitutional Convention and the ratification of our present Constitution, followed shortly thereafter by the adoption of the first ten Amendments. However, while the need for a stronger federal union was evident, some states, particularly the smaller ones, were fearful that the central government would encroach upon their sovereign rights as independent states. One significant cause of concern was that a traditional source of state independence, the militia, would someday be weakened or eliminated, thus leaving the states prey to the standing army of a powerful and oppressive central government. See 1 *Annals of Congress* 749-750 (1789). To satisfy the states' desire that their militia system be forever preserved from any dangerous de-

gree of federal control, the Second Amendment was enacted. See Story, 3 *Commentaries on the Constitution of the United States;* §1890 at 746 (1833).

Therefore, the background to the enactment of the Second Amendment can be of no assistance to the appellants in urging that there is, or ever was, any fundamental personal right to bear arms. Instead, this historical material supports the conclusion that the "right to bear arms" is a political right, residing in the militia, and not a personal right, and that the purpose of the Second Amendment was solely to preserve this political right of the states as against the federal government.

POINT II

The constitutionality of the individual sections of Chapter 60 of the Public Laws of New Jersey of 1966 is not properly before the Court, because the Supreme Court of New Jersey declined to pass on the validity of these provisions absent any indication that the appellants had been personally affected by them.

Besides launching a broadside constitutional attack on Chapter 60 as being in violation of the Second, Ninth and Fourteenth Amendments, the appellants also point to certain alleged constitutional "defects" of particular sections of the law (P15 to P19). However, the Supreme Court of New Jersey did not pass on these issues because there was no indication that any of the appellants had been personally affected by the provisions challenged and thus the points raised were not ripe for consideration.

The Supreme Court of New Jersey's unwillingness to render an advisory opinion on abstract questions of constitutional law is fully in accord with generally accepted principles of constitutional adjudication.

In *N.A.A.C.P.* v. *Alabama,* 357 U. S. 449, 459 (1958), the Court said:

> "To limit the breadth of issues which must be dealt with in particular litigation, this Court has generally insisted that parties rely only on constitutional rights which are personal to themselves. Tileston v. Ullman, 381 U. S. 44, Robertson and Kirkham, Jurisdiction of the Supreme Court (1951 ed.), §298. This rule is related to the broader doctrine that constitutional adjudication should where possible be avoided. See Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 346-348 (concurring opinion)."

The appellants herein are classic examples of parties lacking standing to raise constitutional issues. None of them has stated that he is active in any organization which advocates or approves overthrow of the government. Nor does anyone state that he has had or would have any difficulty in answering any of the questions on the application forms. Moreover, none of them have refused to answer any of these questions or been denied a permit on grounds which relate to these inquiries.

Because the appellants are not personally affected by the specific sections of Chapter 60 whose validity they attack, there are no concrete factual applications of these sections currently before the Court. Consequently, it is not yet possible to know whether anyone will be adversely affected by the sections. Moreover, it is impossible to determine the exact manner in which they will be interpreted and applied by those responsible for administering the law. This situation prevents the issues which the appellants seek to raise from being "ripe" for adjudication. "Ripeness," equally as much as "standing,"

is a doctrine of constitutional adjudication employed by this Court to avoid ruling upon issues of purely academic interest. The rationale for the doctrine was well expressed in *Watson* v. *Buck*, 313 U. S. 387, 402 (1941) where the Court said:

> "A law which is constitutional as applied in one manner may still contravene the Constitution as applied in another. Since all contingencies of attempted enforcement cannot be envisioned in advance of those applications, courts have in the main found it wiser to delay passing upon the constitutionality of all the separate phases of a comprehensive statute until faced with cases involving particular provisions as specifically applied to persons who claim to be injured. Passing upon the possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case."

The Supreme Court of New Jersey, in refusing to consider arguments addressed to the validity of individual sections of Chapter 60, thus acted in accordance with the decisions of this Court. Furthermore, appellants' contentions relating to the individual sections of the law come before this Court without the benefit of either interpretation of the pertinent stautory sections or a ruling as to their constitutionality by the state courts. For these reasons, the constitutional validity of the individual sections of Chapter 60 is not properly before the Court.

CONCLUSION

The appellants have not properly raised any substantial or important federal constitutional question which warrants the further attention of this Court and, therefore, it is respectfully urged that this appeal be dismissed.

Respectfully submitted,

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On the Brief.

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

BURTON ET AL. *v.* SILLS, ATTORNEY GENERAL OF NEW JERSEY, ET AL.

APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

No. 1158. Decided April 28, 1969.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.

MR. JUSTICE BRENNAN took no part in the consideration or decision of this case.